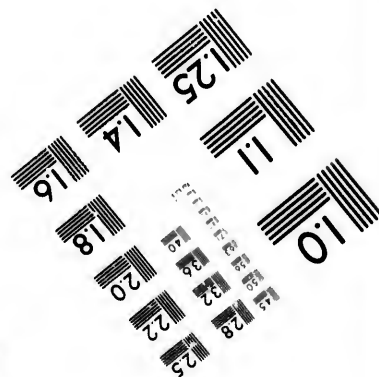
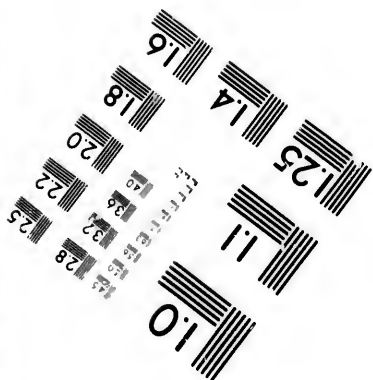
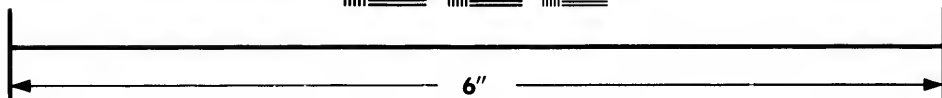
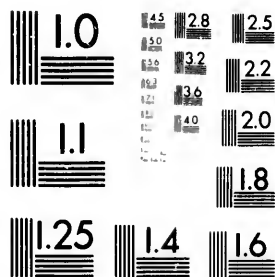


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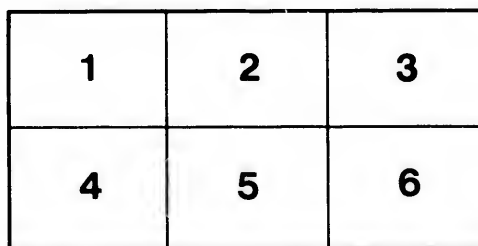
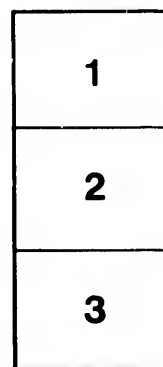
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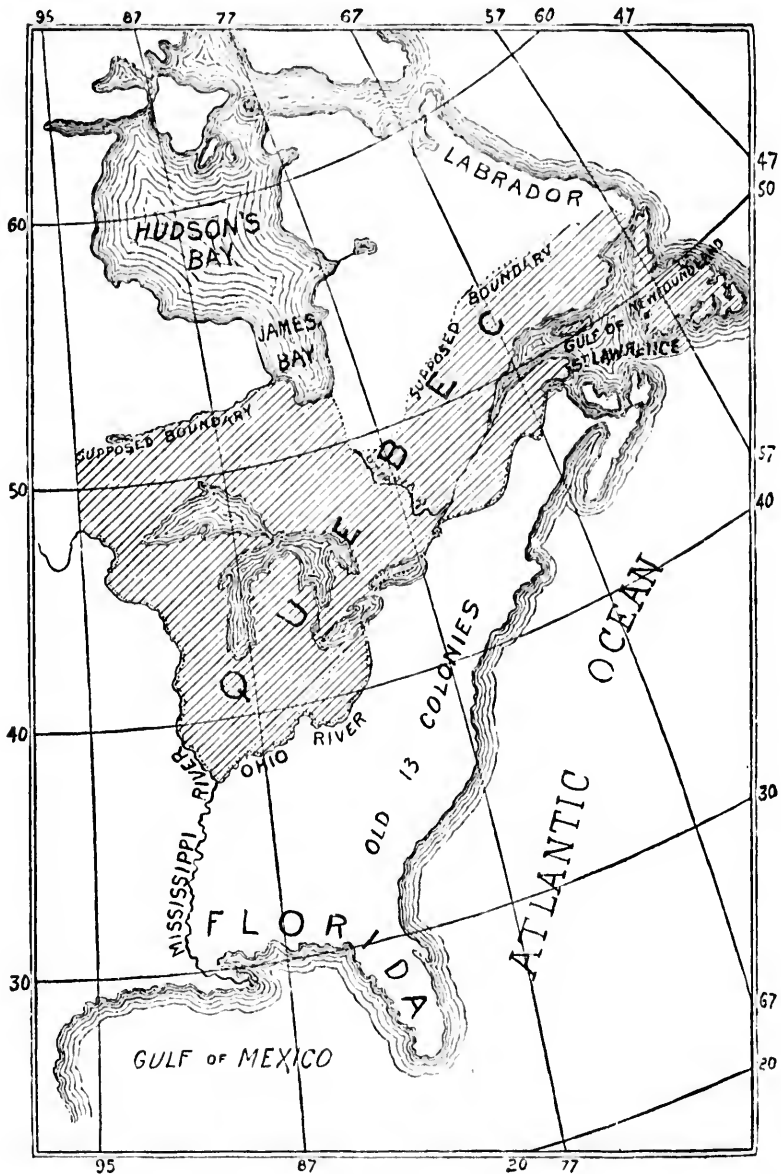
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With the Compliments
of the Author
J. W. Sullivan

The Church in Canada.



THE OLD PROVINCE OF QUEBEC.

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Quarterly Review.*

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ESSAYS

ON

THE CHURCH IN CANADA.

57
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The Church Catholic—National Churches—Anglican and Gallican
—The Church in Canada under French Rule—The Capitula-
tions at Montreal and Quebec (1759-60)—The Treaty of
Paris, 1763—The Quebec Act, 1774, and the Speeches on
it in the English Parliament—The Church under
British Rule—Territory within the Act and
the Treaty—Geographical and Political
changes resulting in the present Do-
minion—The Church in Ontario.

30

BY D. A. O'SULLIVAN, Esq., Q.C., LL.D.,
OF OSGOODE HALL, TORONTO.

Author of "GOVERNMENT IN CANADA," Etc., Etc.

WITH AN INTRODUCTION BY

HIS GRACE THE ARCHBISHOP OF TORONTO.

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TORONTO, 1890.

THE CATHOLIC TRUTH SOCIETY.

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INTRODUCTORY NOTICE

BY

His Grace the Archbishop of Toronto.

The following Essays are from the busy and able pen of Dr. O'Sullivan, Q.C., and will we are sure be read with interest and profit. They deal with many important questions regarding the history of the Catholic Church in Canada and the rights guaranteed to her by treaty and legislative enactments, and they treat these questions in a clear, calm and scholarly manner. They are, in fact, an able and comprehensive epitome of an important portion of the history of the Church in this country, of her vicissitudes, struggles and triumphs. These essays therefore cannot fail to be of interest to the general public, whilst they possess special claims to the attention and study of Canadian Catholics. They will be found to be most useful for Catholic Academies and Colleges, and to deserve a place in every public library of the country. We heartily approve of their publication, and thank the talented author for this important contribution to Canadian Catholic history.

This history is replete with thrilling interest, and is rich in holy memories and glorious traditions. The Church in Canada has had great and heroic missionaries filled with the Apostolic spirit, and on fire with

zeal for the salvation of souls. Several of them shed their blood in martyrdom for the faith, whilst others led lives of slow martyrdom in hunger, cold and untold hardships and sufferings. They penetrated into the dark forest, explored unknown rivers, and launched their frail canoes on lakes whose bright waters had never before smiled in the face of a white man, in quest of the fierce, untutored savage, that they might redeem him from barbarism, might announce the glad tidings of salvation to his unaccustomed ears and make him a child of God and an heir of Heaven. They baptized islands, lakes, rivers and capes with the names of saints, and they thus stamped the broad seal of Catholicism on the physical features of the country, so that we may truly say of them :

Their memory liveth on our hills,
 Their baptism on our shore,
 Our everlasting rivers speak
 Their dialect of yore.

We bespeak for Dr. O'Sullivan's book a wide circulation.

+ John Walsh
 Archbishop of Toronto

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TO THE READER.

THE following Essays on the Church in Canada appeared originally in the *American Catholic Quarterly Review*, and are here reprinted, though in a different order and with slight alterations, to meet the general reader. The writer hopes that they may be of assistance to those who wish to become acquainted from authentic sources with some questions that are occasionally of interest to the general public, and are of permanent interest to the Catholics of this Dominion. The reader can be assured of the genuineness of the facts stated, as on every occasion particular search has been made from indisputable sources. The late Mgr. Corcoran perused these papers before their insertion in the *Review*, and the writer has reason to believe that they have been found useful and acceptable to American and Canadian Catholics and to historical writers generally. They were written in hours snatched from professional work, and perhaps do not present all the evidences of research which they really entailed. When it is considered that they were written for a periodical it must be conceded that a certain brevity had to be kept constantly in view; this did not, however, prevent the writer from consulting the original documents and other sources of information concerning Canadian history, even when many of them contained little or nothing to the purpose.

Acknowledgments are due and cheerfully given to Chevalier MacDonell for the use of his library, and also to Mr.

Bain of the Toronto Public Library, and to Mr. Houston of the Legislative Assembly Library, for their courtesy in lending the writer books and pamphlets bearing on the subject.

The writer must also not omit to mention the permission given by Messrs. Hardy and Mahony, of the *American Catholic Quarterly Review*, Philadelphia, to reprint these essays, which are copyrighted by them in the United States. If the Canadian Catholic public are to receive any advantage from these articles appearing in a cheap and handy form, their acknowledgments are mainly due to these enterprising publishers.

A full table of contents has been added in the hope that it may be useful for students and others desirous of mastering the subjects discussed.

D. A. O'S.

TORONTO,
CHRISTMAS VACATION,
1889.



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The map on the first page is drawn from the boundaries given in the Quebec Act. The northern and north-eastern limits are yet undetermined.

When on page 71 it is stated that the old Province of Quebec included part of Manitoba, that was written at a time when the boundaries of Manitoba extended eastward beyond their present limits.

The word "recognized" in the last line of page 10 should be "preconized" as it stands in the *Quarterly*.

The note to page 120 has "Cornwall" as one of the sees of Eastern Ontario. This has since been announced as Alexandria.

Some recent writers who ought to know better, talk of the "conquest" of Canada—meaning thereby that Canada was conquered by England and not *ceded* to that power, in 1763. The correct statement is this: That there was a conquest of Quebec and Montreal in which these towns capitulated; but under the capitulations it was unknown and undetermined to which power Canada should belong ultimately. (See page 53.) After three years barter and delay, the English and French agreed on the division they were to make in America, and Canada fell to the English—the French making it over by a treaty of cession. That treaty is like a deed of grant whereby one landowner conveys property to another; a treaty is no more necessary to a conquest, or usual with it, than is a written transfer with goods taken by a highwayman. There was a conquest of Canada but it was terminated by a treaty of cession. (See articles on Treaties by the present writer in the *American Catholic Quarterly Review*, July, 1887.)

"One great fact stands out conspicuously in Canadian history—the Church of Rome. More even than the royal power she shaped the character and the destinies of the colony. She was its nurse and almost its mother ; and wayward and headstrong as it was, it never broke the ties of faith that held it to her. These ties formed, under the old régime, the only vital co-herence in the population. The royal government was transient. The English conquest shattered the whole apparatus of civil administration at a blow, but it left her untouched. Governors, intendants, councils and commandants, all were gone, the principal seignors fled the colony, and a people who had never learned to control themselves or help themselves, were suddenly left to their own devices. Confusion, if not anarchy, would have followed but for the parish priests, who, in a character of double paternity, half spiritual and half temporal, became more than ever the guardians of order throughout Canada."—PARKMAN.

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ESSAYS
ON THE
CHURCH IN CANADA.

CHAPTER I.

INTRODUCTORY.

Intention and scope of these Essays, as written in 1883-8, for the American Catholic Quarterly Review.

AT the distinguished company assembled at Toronto last autumn in honor of Archbishop Lynch, many of the readers of this REVIEW who were present and heard the speeches will have remembered with what pardonable pride the venerable prelate from Quebec, Archbishop Taschereau, referred to the ancient boundaries of his diocese; to the time when his predecessors had jurisdiction not only over the province of his host, but westward to the valleys of the Ohio and the Mississippi.* No one better than the illustrious speaker

*This was written in 1886. Since that time Archbishop Lynch has passed away and the See of Toronto is now filled by the Most Reverend John Walsh, D.D., formerly Bishop of London, Canada, and a distinguished contributor of the *Quarterly Review*. The Archbishop of Quebec is now Cardinal Taschereau.

could have depicted the time when, in Canada, a long line of bishops traced the outlines of a great CROSS on this Continent, at once the symbol and limits of their jurisdiction, connecting the Atlantic with the Rocky Mountains, intersected by a belt of territory extending from Hudson's Bay to the waters of the Gulf of Mexico. This was the diocese of Quebec not only under the old French regime, but for many years after the cession of Canada to England in 1763—up, in fact, to the formation of the United States some years later. The early American Church, not owing allegiance to the French or Canadian bishops, comprised what was comparatively a small strip of Atlantic seaboard, with France to the north and west and Spain to the south. Probably the moderation of the speaker had been somewhat suggested by the cosmopolitan character of the assembly, fearing lest some representative of the Mexican Church might have arisen and asserted his claim, if not to the larger portion of the Continent, at least forestalling Quebec in priority by a good century and a quarter. Conceding this, there yet remained a respectable antiquity to Bishop Laval and his successors, and a jurisdiction of territory that now covers nearly a dozen ecclesiastical provinces.

But beyond this there are some unique things about the Church in Canada. We had something resembling Church establishment prior to the cession, and we have had since the cession an attempted establishment, so to speak, under British law. Our bishops in French times were the choice of the king, and the diocese, convents and colleges were established by royal patent. In early English rule, since the cession, the King of England has been consulted in the choice of bishops, and the Downing Street authorities have time and again signified their disapproval or acceptance of nominees to the episcopal see of Quebec before they were recognized at Rome.

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In truth, we have had the representative of the Crown trying, by every means, to force the Church under the law, so that not only the bishop but every *curé* should seem to be appointed by the king's most excellent majesty. In former days, in England, a Catholic was thought to be good enough to be head of the Protestant Church; and as it was a poor rule that worked only one way, the flexibility of the constitution was thought to be sufficient to enable a Protestant king in return to become the head of the Catholic Church, at least good enough for the Church in a colony. We have had Protestant legal luminaries amongst us, at one time arguing that Roman Catholics in Quebec or Lower Canada had no rights whatever, as compared with the Church of England, and at another arguing that the Catholic Church is the only Church there established by law. We have seen the one see of Quebec occupied by two titular Bishops—a Catholic and an Anglican—and the latter forced to give way. Learned judges and attorney generals have wasted their time drafting *commissions* for Catholic bishops to be licensed as Chief Ecclesiastical Superintendents of the Church of Rome, with irremovable *curés* and state-erected parishes; and afterwards we have seen these officials sit, "check by jowl," with the self-same superintendents in the legislative councils of the province, not as superintendents but as recognized bishops of this favored Church. And to this day, in the Province of Quebec, the parish, so erected by the Bishop, is equally as well known as is the township or county or ward under its municipal law, and the *curé* and church wardens are recognized in the public law of the land. The law apportiones the tithes and its officers collect them. On the other hand, there is also on record within this country the refusal by Protestant rulers to grant Wesleyan Methodists any sort of legal recognition for their ministers, unless under a security of two hundred pounds sterling and the appearance

of seven respectable members testifying before justices of the quarter sessions as to the genuineness of the minister in question, and the additional indignity of a violent protest against even this concession by a Protestant chief justice.*

We have had the Church of England established by law in one province, Nova Scotia, and generally the attempted disregard everywhere of all who did not belong to that church. We have examples of a Catholic being in the position of O'Connell as to taking his seat in the Commons. We have the sad story of the Acadians and the persecutions of religious, and by one of those curious retributions by which Providence makes a fool of people, we have a small province, into which no Catholic was allowed to emigrate, now numbering more Catholics than Protestants.

In our chief Protestant Province of Ontario we have had a committee of the legislature report that the Church of England is not the church by law established in Canada, and that no prayers from its chaplain would be tolerated. We have had governments make a choice of religions, and find them approving of four—the Catholic, the Anglican, the Presbyterian, and the Methodist—and following the example in Ireland of giving the most assistance where it was least needed. We have had, however, within the last sixty years, a Catholic bishop and his clergy supported largely out of the public chest. In this same province we can turn up the estimates in blue books and find pounds upon pounds paid

* In order to show what a beautiful example this judicial dignity bequeathed to his posterity, it is related that when the accounts of the Jesuits' estates were examined by the House of Assembly in Lower Canada it was found that one of the Church of England parsons, residing in Quebec, was in the habit of annually drawing a large income from the school funds on pretence of being "Chaplain to the Jesuits." "The Jesuits," says Wm. Lyon Mackenzie, who is authority for this story, "had been all dead many years before, and, besides, they were Roman Catholics. The parson's name was Sewell, a son of Jonathan, the Chief Justice."

out of the public taxes for the building and repairing of Catholic churches. We have separate schools, and we have had large sums paid annually in this same Protestant province for the support of Catholic colleges. We have had tithes, as they still have them in Quebec. Here, too, may be found the name of a legislative councillor who was an Honorable and Right Reverend gentleman—the first Roman Catholic Bishop of Upper Canada—in receipt of a considerable pension from the state and of complimentary notices for his loyalty from the Prince Regent. We have had riots and mobs attacking processions, and we have in return a Protestant city turn out to honor its Archbishop, and the vice-regal, provincial, and civic dignitaries vieing with one another to honor this same rather outspoken churchman. There is, in fine, in Canada, an immense territory, with every assistance of nature, for a great nation, with the only serious drawback of a lack of anything like a proportionate population. There is need of fifty millions of people, but, in the meantime, things go on very well with a tenth of that number, one-half of whom are Catholics, holding their own fairly well. The Catholics believe that the form of civil government in Canada is one of the best in the world, and that the Church is as free and prosperous as the Church militant can expect to be.

Whoever undertakes to write the history of the Catholic Church for our English-speaking Catholics will find plenty of material at hand, but the reader must not expect to find in these hurried essays any attempt in that direction. What is noted down here the historian may use as far as it goes, and in the absence of history the general reader may find himself interested, and it is to be hoped instructed also, by it. The object here in view is to take into consideration certain questions affecting the Catholic Church in Canada and discuss them

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in the light of authentic history. We hear a great deal nowadays about Ultramon'anes and Gallicans, about the Treaty of Paris and the Quebec Act, the Supremacy of the Crown of England, about Established Churches and the theories of a State Church. Whatever amount of information there may be needed or cared about by Catholics or by the Catholic Church on these questions need not be here discussed; one thing is certain that non-Catholic writers and the secular press pretty generally are misinformed about them. The Catholic Church is its own witness and does not stand in need of secular history, but there are times when it is convenient and useful for Catholic subjects and citizens to be rightly acquainted with those troublous periods of history wherein the Church or its local representatives are important factors. The history of the Church in Canada illustrates what Doctor Brownson has well said of modern history in general, that when full historical truth comes to be told it will be altogether more favorable to the defenders of the Catholic cause than they have dared to believe. It is to such periods in the history of this country that the reader's attention is here directed; but in order to understand them intelligently something must first of all be said in reference to the relation which the Catholic Church holds in every country towards the civil state, and also the condition of established or national or local churches under the civil authority around and above them.





CHAPTER II.

The Church Catholic and Roman. The Encyclical Immortale Dei. Christendom. The Catholic Church is not and cannot be "established by law" in any particular country.

IT may seem unexpected that the subject of Establishments should have any special connection with a consideration of the Church in Canada. Such, however, will be found to be the fact—indeed, to a thorough understanding of our subject, reference must be had to what was in reality a State Establishment in England, as well as to what was believed to be a State or National Church of France. At the risk of being tedious, it may, perhaps, be desirable to examine briefly how far the term "establishment" is applicable and appropriate to churches generally. A misconception in regard to this and some cognate matters has not only engendered a considerable amount of bad feeling in this country, but has given rise to prejudices and opinions which are positively unjust and unfounded, so far as Catholics are concerned. Mere individual opinion might go, as it has largely gone, for nothing. But it is otherwise with judicial determination. The judges of the judicial committee of the Privy Council in England, having before them every day questions bearing on their own State Church, may very naturally import corresponding impressions into the consideration of a case wherein the Catholic Church may be represented to be a State Church. They have assumed for example, that during the French rule

in Canada the Catholic Church was established by law; and that since 1763, when the country passed into the hands of the English, though it may not have been an establishment "in the full sense of the term, it nevertheless continued to be a Church recognized by the State." It was one, therefore, over which the State could exercise some control. An establishment for non-Catholics generally is an institution over which the State presides, over which there might be a minister of public worship; and it presupposes a condition of things wherein the law could put an end to the establishment or to the parliamentary religion, just as the law created it. "The Anglican theologians," says De Maistre, "often call their Church the Establishment, without perceiving that this single word annuls their religion." The word in its usual acceptation is not used by Catholic writers regarding the Catholic Church.

The popular view of a State establishment becomes the more important to correct, inasmuch as one hears a good deal of a French National Church—the "liberties" of the Gallican Church—the right to appeal from an ecclesiastical to a lay tribunal, commonly called the *appel comme d'abus*, and other matters now of some antiquity. Several industrious local writers, setting out with conclusions and adducing only such evidence as went in support of them, have discovered a National Catholic Church in Canada—an Established Church—a Church with the Gallican liberties (so they are called) of the Church of France, a Royal as opposed to a Papal supremacy; and with much bewailing these writers have adverted to the Ultramontane Church of the Vatican Council, under which for the first time Canada was brought under Rome, and the beloved national element put an end to. It is not likely that these gentlemen will change their opinions, even when these

misconceptions are corrected; but it is due to those desiring to know the real state of affairs to have the truth put before them. The Catholic Church is not, and was not, and cannot be a national church in Canada or elsewhere; it cannot be "established" as is the church familiar to their lordships of the Pr. y Council; the supremacy of the Church is and has always been that of the Pope of Rome; and, finally, the Canadian Church was as ultramontane in the time of Louis XIV., and of the Popes who opposed him, as it was after the Vatican Council. It must needs be repeated very often in certain quarters that every Catholic is, so to speak, an ultramontane Catholic, and that whoever is not ultramontane is no Catholic.

The teaching of the Catholic Church on what lies at the foundation of this question of establishments may be found set out with great clearness in the famous Encyclical Letter, *Immortale Dei*, of His Holiness Pope Leo XIII., on "The Christian Constitution of States," dated the 1st November, 1885. After referring to the office of the Church in "watching and legislating for all that concerns religion, of teaching all nations, of extending as far as may be the borders of Christianity, and, in a word, of administering its affairs without let or hindrance, according to its own judgment," the Holy Father proceeds to show that the Church always claimed this authority from the time the Apostles maintained that God rather than man was to be obeyed. The Catholic belief on the relations of the Church and the State is thus expressed: "God, then, has divided the charge of the human race between two powers, viz, the ecclesiastical and the civil, the one being set over divine and the other over human things. Each is the greatest in its own kind; each has certain limits within which it is restricted, and there is, we may say, a world marked off as a

field for the proper action of each. . . . So, then, there must needs be a certain orderly connection between these two powers, which may not unfairly be compared to the union with which soul and body are united in man. What the nature of that union is, and what its extent, cannot otherwise be determined than, as we have said, by having regard to the nature of each power, and by taking account of the relative excellence and nobility of their ends; for one of them has for its proximate and chief aim the care of the goods of the world, the other the attainment of the goods of heaven that are eternal. Whatsoever, therefore, in human affairs is in a manner sacred; whatsoever pertains to the salvation of souls, or the worship of God, whether it be so in its own nature, or, on the other hand, is held to be so for the sake of the end to which it is referred, all this is in the power, and subject to the free disposition, of the Church; but all other things which are embraced in the civil and political order are rightly subject to the civil authority, since Jesus Christ has commanded that what is Caesar's is to be paid to Caesar, and what is God's to God."

If this ecclesiastical power is entrusted to the Catholic Church, and if she has charge of divine things as fully as the civil power has charge of human things, it follows that the Church has as good a claim—indeed the same claim—to the possession of her power as the State can show for its own. Whatever the extent of that power may be, it cannot, on one hand, be lawfully abridged by a hostile civil power, or, on the other hand, be confirmed or more fully "established" by the action of a friendly civil power. The Church is entitled to this power, not by virtue of a mere human law, but independently of any human law, and if needs be, in spite of it. The Catholic Church, therefore, in a higher sense than that of

So, then, there which the word is generally used, is "established," but not
been these two established by any civil or human authority.

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The Catholic Church never was and never can be "estab-
lished by law," in the accepted meaning of the phrase, because
a Church so established comes to mean one that depends on
the laws of some particular State or country for its existence
and support. It, therefore, at the best, can be no more than
a State or National Church. It cannot be catholic—it cannot
be universal. As it may be established in a dozen different
countries, it will necessarily be required to conform to the
civil or municipal law of the land in every one of these; and,
therefore, it is vain to expect that there should be unity,
because there never was, and never will be, two countries in
the world governed by the same local laws. If the civil or
temporal affairs of the whole world were entrusted to some
new Caesar Augustus, and if the subjects of his authority
undertook, in union with him, to "establish" the Catholic
Church by means of an imperial edict, or act of parliament,
that would mean, and mean only, the recognition of the
Church to have charge over spiritual affairs in its own legi-
timate sphere. This would still fall short of an establishment
as popularly understood.

"The theory of established churches," says Cardinal Man-
ning, "demands an ecclesiastical supremacy in the civil power.
The two come and go together; and when the ecclesiastical
supremacy is declining, the days of establishments are num-
bered. . . . A church that consents to be established
at the cost of violating its divine constitution and its own
conscience, is not a church, but an apostasy. No establish-
ment by State laws and State support has ever been or can
ever be accepted by the Catholic Church at the cost of its own
divine constitution. The Catholic Church can stand, and has

stood, for centuries in relations of amity with the civil powers of the world; but in the sense of establishments here understood, the Catholic Church has never been established in any kingdom upon earth."

With these extracts it will not be further necessary to enter into the very difficult and debatable ground of the relations between the Catholic Church and the Civil State. It will be admitted by all that the Catholic Church has to deal with all nations, and further that if she were obliged to submit in ecclesiastical matters to each one of them she would cease to be catholic or universal. She would become a national or state organization. The Church stands towards the civil powers in Canada just as she does in other countries. The same supremacy of Rome is acknowledged by the Church here as is acknowledged in France, or Austria, or England, or the Americas, or Australia. This is Ultramontanism*—a term which arose in France and used by those who wished the Church to be governed by the State. For Catholics to be considered Ultramontane is no more than saying that they acknowledge the supremacy of the Pope of Rome. Not to be Ultramontane is to give up the Papal and take to the State supremacy. This is the position of every national church, whether Anglican or Gallican. It would seem superfluous to say that the Church Roman and Catholic could be anything else but Ultramontane.

* "Ultramontane" literally means "beyond the mountains"—that is as the term arose, beyond the Alps—the supremacy of the French Church giving rise to the expression. Ultramarine would have been more correct and quite as appropriate and necessary as to the continents other than Europe. When the expression is understood it will be seen how superfluous it is to apply it to Catholics in Canada, or in any other country.

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CHAPTER III.

The English National Church.

SINCE the breaking up of Christendom in the sixteenth century, it is manifest that the phrase, "established by law," as applied to churches, must be restricted to national churches, or to such as are fostered or controlled by the will of any one sovereign people. But there is no longer Christendom. When there was such, the Roman Pontiff was its head and the Catholic Church was its recognized Church. The temporal authority in each country naturally wanted, and sometimes imperatively required, particular regulations; and in this regard the Chief of Christendom, for the sake of peace, or for other good and sufficient reasons, made special arrangements with that country—made concordats. In the Encyclical on Civil Government already referred to, it is said that "sometimes, however, circumstances arise when another method of concord is available for peace and liberty; we mean when princes and the Roman Pontiff come to an understanding concerning any particular matter. In such circumstances the Church gives singular proof of her maternal good-will, and is accustomed to exhibit the highest possible degree of generosity and indulgence."

Protestant writers, to whom the idea of a universal authority in spirituals, or a Catholic Church, is objectionable as affording a twofold argument against themselves and in favor of Catholicity (so to call the Church), have readily taken up the idea of national churches, either as the mere creation of the State, as Hobbes in his "Leviathan" has it,

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or as an organization for spiritual affairs co-existent with the civil government of the people, as is the more recent and less humiliating view. The theory, however, puts a church on a very temporal and precarious foothold and entirely at the mercy of the populace, who, as once before, might cry out for Barabbas; because the people, the king and Parliament in England, for example, could repeal the Act of Supremacy, could declare the religion of the State to be anything or nothing, and wipe out the Church it had established; and do all that in a regular and constitutional way. Indeed, the days of the Church of England as a legal establishment are likely to be numbered, and may from constitutional, revolutionary, or external causes be completely annihilated. From a regular and compact Christendom we find there have been experiments with national churches; and now there is but one remaining step, from a few straggling and debilitated establishments to no church at all.

In the sixteenth century the English people achieved a separation from Christendom and established a national church. It was the ingenious theory of some of her historians that this national church is the original and genuine *Ecclesia Anglicana*, the Church whose rights were maintained inviolate in Magna Charta, and concerning which the repeated statutes of the Plantagenets form no inconsiderable portion of the legislation of the kingdom.* But it is undisputed that the

* This theory sits uneasily on the "Declaration of the Homily against Peril of Idolatry," put forth by authority of Queen Elizabeth in 1562, and approved of by the 35th Article of the Church of England. This describes the Church as fallen into the "pit of damnable idolatry, in which all the world, as it were drowned, continued until our age by the space of above eight hundred years, unspoken against in a manner." That was declared to be the case, "not only with the unlearned and simple, but the learned and wise; not the people only, but the bishops; not the sheep, but also the shepherds," et c. Rowland, a grave constitutional writer, says: "Our ancestors were certainly Roman Catholics," and then he goes on to resist the imputation of idolatry to the "Papists." If they were not "Papists," it is difficult to understand how they could be respecting appeals to Rome, or Henry VIII.'s quarrel with the Pope. See also an article in the *British Quarterly Review* for January last, a writer on this subject says: "Whatever else the Reformation did, it gave to the sovereign that su-

Roman Pontiff had great control over the Church, that up to the time of Henry VIII. an appeal lay to him; that he had the right of nominations to vacant sees and to the heads of monastic institutions; that he confirmed all appointments of archbishops and bishops; and that a rupture between him and the king was the cause of the establishment of a national church of England and a separation from the Universal Church of Rome.

What took place in England is not pertinent to our subject, except in so far as reference is made to English church establishments. The abolition of appeals which Henry VIII. wanted, and the separation which finally resulted from his quarrel with the Pope, turned out to be two very different and, perhaps, unexpected things. But it is quite certain that other monarchs in Europe before and after his time were equally desirous, if not to nationalize the Church, at least to control it as much as possible. The history of Western Europe at the period we refer to is largely taken up with kindly encroachments on the power, spiritual and temporal, of the Papacy. Germany, Spain, France, might be considered as well as England. In the case of France, for example, we find concordats and pragmatic sanctions between the Roman Pontiffs and the kings, in order to come to an understanding on the particular matters of their nation. To say that because of these arrangements France or Spain had set up a national church, as happened in England, and had become independent of the Holy See, is what cannot be justified. Yet that lies at the foundation of an error within the consideration of so modern a subject as the status of the Church in Canada. The learned reader will withhold his decision as to the relevancy

premacny over the Church which was formerly held by the Bishop of Rome. . . . The bare fact from which we must start is, that the Bishop of Rome before the Reformation was supreme head of the Church in England."

of some things here set out, which are well known, in order that the subject may be fully grasped. We hear of the Gallican Church, the liberties of the Gallican Church, and sometimes of the Gallican school of theology, until it is paralleled with the Anglican Church; and, finally, a grave bench of judges think that there is something in it, and what is more important, a grave question came near being decided in reference to all this. Writers in Canada have espoused this national church, and have given day and document for the transition from the Gallican Church of the past to the Ultramontane Church of our own day.

It is difficult to conceive nowadays the position the Catholic Church occupied in England in very early times, or even in times immediately prior to Henry VIII. The bishop's see at first was commensurate with a kingdom, the parish with a township. The bishop had then his own courts, and everything relating to the care of souls was to be adjudged therein. The law of these courts was the canon and episcopal law; and when the bishop excommunicated, the royal authority gave its full support towards carrying out the sentence.* The ecclesiastical courts decided all questions of wills, of legitimacy, and of marriage, and came very near absorbing all the litigation concerning contracts. Any man who could read might claim to have his case handed over to the ordinary—the Bishop—and so claim his “benefit of clergy.” The wonder was that the king's court had anything to do. The king's council, or ultimate court, had no jurisdiction by a final appeal over these ecclesiastical courts; but an appeal, however, lay to Rome. Not only were the clergy possessed of their separate judicatures, in which they administered their own law, but they

*As long as the Convocation of the Established Church in the time of Henry VIII. had any power, things were not done so decently. The bishops could imprison on the mere charge of heresy, and when the cause came to trial the proceedings were in accordance with neither law nor justice.

formed a separate order in the State. The Lords Spiritual were selected from the ecclesiastical chiefs; they had their convocations in York and Canterbury, sitting regularly at the same time as the Commons, and being summoned with them. They, it is said, disputed the supreme legislative authority with the civil power in the State. They were in a majority among the peers, they had immense wealth, they were exempt from taxation. So far, then, from being a church "established by law," the Catholic Church in England was a separate, independent power in the State; and this position was accorded it by the oaths of kings, and by repeated acts of Parliament. In upwards of twenty statutes, during the Norman and English periods, the "liberties" of the Church always appear. It claimed the sole right to define doctrines of faith and morals and to affix the limits of its own jurisdiction in that sphere. It taught that the civil power was to be obeyed in its own sphere; it was in union with, and subject to, the Popes of Rome. This was the Church of England in Catholic times, is the Church of the Vatican Council, and is the teaching of the Encyclical of Pope Leo XIII. on the relation of the State to the Church at this very hour. This is ultramontanism, and it is, and has been always, opposed to national churches or mere State establishments. "The Church in England, in Catholic times, was not established," says Cardinal Manning, "and when an establishment appeared it ceased being Catholic."

But Henry VIII. and his successors changed all this. The ecclesiastical courts are no more; their particular law is good only so far as it is not repugnant to the law of the land. Wills and matters testamentary are now looked after in the Probate Division of the High Court of Justice. Convocation is only a meeting for an adjournment. Some spiritual peers there are, but they sit as barons, the lowest of the five orders of nobility in the United Kingdom. The national

church is not relatively to the State what the Church was in former times. Questions for the care of souls are now disposed of by lay, and not by ecclesiastical tribunals. The Church of itself has no authority.

The judicial committee of the Privy Council now decides what is, or what is not, heresy as opposed to the Thirty-nine Articles; and they are the judges of the legal tests of doctrine in the Church of England. These articles are rendered law and good religion by the statute 13 Elizabeth. And so the same judicial committee has decided on the canonicity of the books of the Old and the New Testament, the "real, active, objective presence" in the communion, as also the state of depravity sufficient to disentitle a communicant from receiving the communion. The manner of baptism has been defined by law, as well as all that is legal and salutary to believe so far as regards the same sacrament. The communion table, the altar, the crosses, the candlesticks, the lighted candles, the vestments, the bread for the service, and many other kindred matters, are judicially laid down in English law as minutely as is the law of landlord and tenant. The legal posture of the clergyman has been carefully regulated. For instance, it has been held illegal for him in the celebration of the communion to elevate the elements above his head, or to mix water with the wine, or to use incense, or to kneel or prostrate himself before the elements. To bow one knee has been held a breach of the discipline of the Church; as also a practice of the minister to stand with his back to the people.* Decisions of this kind are not confined to the ones so well known as the Maconochie case, but numbers like it can be turned up in the law reports. This will give a fair idea of what is meant by a Protestant church as established by law in England.

* See Moore's *Privy Council Cases*, New Series, vol. vii, page 167; vol. ii., page 37; vol. xv., page 1; *Weekly Reporter*, vol. xx., page 804; and *Jurist*, page 443.

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CHAPTER IV.

The so called French National Church—The Gallican Church.

HOW does this account of the Church of England as given in the last chapter compare with the Church of France—the Gallican Church? Louis XIV., it is true, had his differences with the Popes, but there was no such fatal quarrel with Rome as appears in English history. Relations, such as they were, often unsatisfactory to both parties, were maintained between the head of the Church and the head of the nation; but at no time did the parliaments or other civil tribunals profess to decide on the doctrine, the liturgy, or the discipline of the Church. The Catholic Church was no more an established church in France in the time of Louis XIV., than was the Catholic Church in England in the time of Edward III. Let us see how far it can be called a national church. From the time that Valentinian commanded the Gallican Church to submit to the Pope, down to the famous Articles of 1682, there is, on the face of French history, abundant evidence of the ultramontane or Papal, as opposed to the national or Gallican, character of the French Church. After she received the pallium from Rome, we have repeated pragmatic sanctions and concordats between the French kings and the Popes; for instance, the pragmatic sanction (now by many regarded as spurious) of Saint Louis in 1268, that agreed on at Bourges in 1438 with Charles VII., the concordat of 1515 between Francis I. and Leo X., abolishing this objectionable treaty with Charles VII.

The Gallican Church was, therefore, controlled to some extent by a power outside the French nation, and so was not national; it was ultramontane. These negotiations between France and the Holy See necessarily presume two things: 1st—to use language not quite exact, but popular enough to be understood—the dependency of the French Church on the Roman; 2d, privileges or concessions, liberties or slaveries, of the French Church, either towards the Roman Pontiff or towards the king. For the king, especially Louis XIV., used the influence of the Pope against the clergy, and availed himself of the clergy to make terms with the Pope. The French clergy were, in the fifteenth and sixteenth centuries, in a peculiar position as regards the king and the royal treasury. They were possessed of considerable means, and aided the king very materially in liquidating the burthens of his kingdom. They were in a position to ask favors, and the king, having conceded some, was similarly in a position to command their subjection. “It has always been a maxim of the French court,” says Ranke, “that the papal power is to be restricted by means of the French clergy, and that the clergy, on the other hand, are to be kept in due limits by means of the papal power. But never did a prince hold his clergy in more absolute command than did Louis XIV. A spirit of submission without parallel is evinced in the addresses presented to him by that body on solemn occasions. . . . And certainly the clergy of France did support their king without scruple against the Pope. The declarations they published were from year to year increasingly decisive in favor of the royal authority. At length there assembled the Convocation of 1682. ‘It was summoned and dissolved,’ remarks the Venetian ambassador, ‘at the convenience of the king’s ministers, and was guided by their suggestions.’ The four articles drawn up by this assembly have from that time been regarded

as the manifesto of the Gallican immunities. It was the opinion of contemporaries that, although France might remain within the pale of the Catholic Church, it yet stood on the threshold, in readiness for stepping beyond it. The king exalted the propositions above named into a kind of 'Articles of Faith,' a symbolical book. All schools were to be regulated in conformity with these precepts; and no man could attain to a degree, either in the judicial or theological faculties, who did not swear to maintain them.

"But the Pope also was still possessed of a weapon. The authors of this declaration—the members of this assembly—were promoted and preferred by the king before all other candidates for episcopal offices; but Innocent refused to grant them spiritual institution.

"They might enjoy the revenues of those sees, but ordination they did not receive; nor could they venture to exercise one spiritual act of the episcopate."

The measures which Louis XIV. employed to coerce the Pope are matters of general history, and are detailed by Ranke, Gerin, Rohrbacher, and other historians. The king found it impolitic to have the Pope as his enemy, and place the Church to which he himself and the French people were attached on the eve of what threatened to be a schism. Pope Innocent XI. remained firm, and so the king made a virtue out of his necessities, and went to the other extreme by his hostility towards the Huguenots. He withdrew from the position he had taken towards the Pope.

Ranke, after describing the change in the king, and the political complications of Western Europe that seemed to have driven him to it, proceeds thus:

"It is true that when this result ensued, Innocent XI. was no longer in existence; but the first French ambassador who appeared in Rome after his death, 10th of August, 1689, renounced the right of asylum; the deportment of the king was altered; he restored Avignon, and entered into negotiations.

"And that was all the more needful, since the new Pope, Alexander VIII., however widely he may have departed from the austere example of his predecessor in other respects, adhered firmly to his principles as regarded the spiritual claims of the Church. Alexander proclaimed anew that the decrees of 1682 were vain and invalid, null and void, having no power to bind even when enforced by an oath. 'Day and night' he declares that he thought of them 'with bitterness of heart, lifting his eyes to Heaven with tears and sighs.'

"After the early death of Alexander VIII., the French made all possible efforts to secure the choice of a Pontiff disposed to measures of peace and conciliation; a purpose that was indeed effected on the elevation of Antonio Pignatelli, who assumed the tiara with the name of Innocent XII., on the 12th of July, 1691.

"But the Pope was not by any means more inclined to compromise the dignity of the Papal See than his predecessors had been; neither did there exist any pressing motive for his so doing, since Louis XIV., was supplied with the most serious and perilous occupation by the arms of the allies.

"The negotiations continued for two years. Innocent more than once rejected the formulas proposed to him by the clergy of France, and they were, in fact, compelled at length to declare that all measures discussed and resolved on, in the

assembly of 1682, should be considered as not having been discussed or resolved on: 'Casting ourselves at the feet of your Holiness, we profess our unspeakable grief for what has been done.' It was not until they had made this unreserved recantation that Innocent acceded them canonical institution.

"Under these conditions only was peace restored. Louis XIV. wrote to the Pope that he retracted his edict relating to the four articles. Thus we perceive that the Roman See once more maintained her prerogatives, even though opposed by the most powerful of monarchs."

Ranke does not in any way question the authenticity or effect of the retraction. He then proceeds:

"The words of the king, in his letter to Innocent XII., dated Versailles, September 14th, 1693, are as follows:

"'I have given the orders needful to the effect that those things should not have force which were contained in my edict of the 22d of March, 1682, relating to the declaration of the clergy of France, and to which I was compelled by past events, but that it should cease to be observed.' In a letter of the 7th of July, 1713, that we find in Artaud's "Histoire du Pape Pie VII.," 1836, tom. ii., p. 16, are the following words: 'It was falsely pretended to him [Clement XI.] that I have dissented from the engagement taken by the letter which I wrote to his predecessor; for I have not compelled any man to maintain the propositions of the clergy of France against his wish; but I could not justly prevent any of my subjects from uttering and maintaining their opinions on a subject regarding which they are at liberty to adopt either one side or the other.'"

This was the condition of Gallicanism in France when Canada was a French colony. The reader need not be de-

tained with any account of the "liberties" (or "slaveries," as Catholic writers call them) of the French Church. They seem, at this distance of time, to resolve themselves chiefly into an annihilation of the Papal authority and an exaltation of the claims of the national clergy. The articles of 1682, some think, were the mildest expression of these liberties;* others consider them as the extreme limit of the kingly encroachments. The first, second, and fourth relate to the Pope and the Councils, and do not concern the subject here in hand. The third article assumes that the Papacy is inferior to the Episcopacy, and in France is subject to the rules, manners, customs, and institutions of the country. This subjection would, therefore, entail such courtly rights and exactions as the right of presentation, the right of the *régale*, the *appel comme d'abus*, and such other infringements of ecclesiastical power as the Court or the parliaments delighted to exercise. In the wilderness along the St. Lawrence, as Garneau in his history intimates, it would scarcely be expected that the courtly customs of the Gallican Church could have much application. The reader will appreciate, however, that in any discussion concerning the status of the Church in Canada, a reference to the Church of France may be most material. At the same time it is to be remembered that so far as "establishments" are concerned, the law of England is, that in any of her colonies the English Church is in the same situation as any other religious body. After a colony has received legislative institutions, the crown has no prerogative to effect the least control over the colonial church; the mother church forms no part of the colonial constitution; and the establishment is not in any way transplanted. The position of the Anglican church, in a British colony, is that of a

* This seems to have been the opinion of Dr. Brownson.

voluntary association.* If this analogy were insisted upon in a case where the French Church was transferred into a colony of France, one would hear less of "establishments" and "liberties" of the Catholic Church in Canada.

There are, therefore, establishments and establishments. A purely civil law that controls the doctrine and the discipline of a church, and manages its affairs just as it does the postal affairs or the customs of the kingdom, no doubt may establish a church or religion in a way that must be conceded to be legal and, probably, constitutional; but it is manifestly a different establishment from that of a church which has its own laws, its own courts, its own undisputed position as an integral part of the constitution; and whose authority and jurisdiction, if not superior to the civil law, are coordinate with it, and admittedly supreme within its own sphere. There is also that milder and uncomplimentary form of establishment of which the civil authority says in effect: We will recognize such or such a church as the established church of this country; just as it might say, we will do business in financial matters with the First National Bank. One cannot help remarking that those who aided in breaking up Christendom have taken low ground for their religions; avoiding a universal head, recourse was at first had to a national or royal supremacy, and after that has been found a failure, every man is and has the right to be the head of his own church. If the right of private judgment is good against the Pope, it ought to be good against the Privy Council. The historical fact is, that the world within a very short period has seen a Christendom with one international head; then national churches with a royal supremacy; and now disestablishment—

* See *Long v. Gray* [Cape Town Bishop], 1 Moore's Cases, N. S., 411; *Colenso v. Gladstone*, 3 L. R., Eq., 1; *In re Bishop Natal*, 2 Moore's Cases, N. S., 115, deciding these points.

no church. "The royal supremacy," says Cardinal Manning in one of his most happy remarks on this subject, "has perished by the law of mortality, which consumes all earthly things." It failed in Ireland—penal laws could not enforce it; in Scotland the whole people rose against it. In Canada, after being shorn of many of its objectionable provisions, it was introduced by the Quebec Act of 1774. After several ineffectual attempts to enforce it, the provision passed through all possible stages of degradation; it was overlooked and waived and ignored, and then finally relegated to the limbo of obsolete law.

During British rule in Canada one thing is certain, that the Church of England never was, and is not now, an establishment by law. The Church of Rome, with its Papal supremacy, could not be expected to confine itself under a Royal supremacy; it could not have acknowledged two inconsistent and irreconcilable authorities, and, therefore, it has not been an established church in Canada. It may well be the case that it is better known to the law of the land than any other church; that its freedom is guaranteed by treaty and by statute; and that the law of nations must be set at defiance before any abridgment of this freedom can be effected—a strong and indestructible bulwark against bigotry emanating from any quarter—but all this falls short of establishment even of the mild character alluded to. It is vastly better than an Establishment.





CHAPTER V.

The Church in Canada under the French Régime.

THE Church under French rule must first of all be considered both with regard to the sequence of events and as throwing light on the state of affairs when this country passed into the hands of the English. It will be contended that it was no national or state church that formerly obtained in this country; that there was no transplanting of "liberties" of the French Church; and that from the historical evidences and legal state papers and other documents pertinent to the solution of these questions, it is impossible to arrive at any other conclusions.

From the discovery of Canada, or rather from the foundation of Quebec, the spiritual care of the French settlers and of the aborigines was entrusted to the Archbishop of Rouen. Quebec dates back to 1608, and is associated with the name of Champlain. Many other discoverers had touched at several points in the Gulf of St. Lawrence from the time of Jacques Cartier over seventy years before. To Poutrincourt is ascribed the honor of bringing the first missionary, in 1610, to this shore. As appears by the ecclesiastical records in Quebec, on the 12th of June, 1611, two Jesuit Fathers arrived from France to begin the work of implanting the faith in the New World. One of these remained about two years, and then returned to France. His *confrère*, after thirty-five years of missionary life, ended his days peacefully with the people he had come to serve. Not alone, however, during all this time;

for in 1615, four Recollects reached Quebec, and every second or third year afterwards new missionaries of these orders reinforced their brethren, as death or other causes thinned their ranks.

The tenth name on the list is Jean de Brebœuf, a martyr in 1649. While not a few are set down as "drowned" or "frozen," there are over twenty on the same glorious roll with this illustrious Jesuit. Later, many are reported as lost—unheard of. In 1620 the Recollect convent was founded on the St. Croix River; the name was afterwards changed to St. Charles, and five years later the Jesuit establishment of Notre Dame des Anges was founded. The year previous St. Joseph had been chosen patron saint of the country. In 1639 the Ursulines and Hospitaliers commenced their labors at Sillery. Within this period is to be found the names of Lalemant and Brebœuf, Maise, Jogues, and other missionaries.

Shortly after, Ville Marie (Montreal) was founded, and churches were built there as in Quebec. The Sulpicians arrived, and with them M. de Queylus in his quality as Grand Vicar of the Archbishop of Rouen. In 1658, however, Mgr. de Laval was named Bishop of *Petræa in part. infid.*, and Vicar Apostolic of New France, and the Grand Vicar retired from the country.* It was not until 1674 that he was named Bishop of Quebec and immediate suffragan of the

*The phrase *in partibus infidelium*, as applied to a bishop, means that the bishop is consecrated to a see which formerly existed, but which has been, chiefly through the devastations of the followers of Mahomet, lost to Christendom. In Spain, Asia Minor, Syria and Africa, numberless churches had been devastated, and the bishops therein compelled to wander from place to place, hoping one day to return to their widowed sees. This was the origin of the phrase; but in more recent times, before the creation of a see, or for other reasons, bishops were named *in partibus*. From the year 1623 to 1850 Catholic affairs in Great Britain were committed to bishops so named. It was and is the case in various parts of the United States and Canada yet. By a decree of the Propaganda in 1882 the formula *in partibus infidelium* was abolished, and non-resident bishops are to be known as "titular" bishops of their sees. See Catholic Dictionary, Art. Bishop.

Holy See. This was by bull of Clement X., dated 1st of October of that year.

During these fifty years it may be fairly argued that whatever principles of the French national church or of Gallicanism could be imported into New France might have been so imported ; that Quebec was ecclesiastically an outlying portion of the Archdiocese of Rouen, and that whatever that was, Quebec was. But now a bishop was to be appointed, and that was regarded then, as it may be now, the test question, or deciding whether Gallican or Ultramontane principles (so to call them) were to be transplanted into the French colony.

On this important matter few writers will be more readily accepted, at all events by Protestants, than the historian Parkman. In his "French Regime," he thus narrates this crisis of ecclesiastical affairs :

"Two great parties divided the Catholics of France—the Gallican, or national party, and the Ultramontane, or papal party. . . . Hence they claimed for him [the Pope] the right of nominating bishops in France. This had anciently been exercised by assemblies of the French clergy, but in the reign of Francis I. the king and the Pope had combined to wrest it from them by the Concordat of Bologna. Under this compact, which was still in force, the Pope appointed French bishops on the nomination of the king, a plan which displeased the Gallicans and did not satisfy the Ultramontanes.

"The Jesuits then, as now, were the most forcible exponents of ultramontane principles. . . . In the question of papal supremacy, as in most things else, Laval was of one mind with them.

“Those versed in such histories will not be surprised to learn that when he received the royal nomination, humility would not permit him to accept it; nor that, being urged, he at length bowed in resignation, still protesting his unworthiness. Nevertheless the royal nomination did not take effect. The Ultramontanes outflanked both the king and the Gallicans, and by adroit strategy made the new prelate completely a creature of the Papacy.

“Instead of appointing him Bishop of Quebec in accordance with the royal initiative, the Pope made him his Vicar Apostolic for Canada, a country of infidel savages, which was excluded from the concordat and under his [the Pope’s] jurisdiction pure and simple. The Gallicans were enraged.

“The Archbishop of Rouen vainly opposed, and the parliaments of Rouen and of Paris vainly protested. The Papal party prevailed. The king, or, rather, Mazarin, gave his consent, subject to certain conditions, the chief of which was an oath of allegiance; and Laval, Grand Vicar Apostolic, decorated with the title of Bishop of Petraea, sailed for his wilderness diocese in the spring of 1659.”*

Slight reference need here be made to other facts which go to the support of this view. The unfortunate episode of Abbe Queylus made it only the more apparent that the “Papal party,” as Parkman would call it, and not the “Gallican party,” was at the head of the Church in Canada.

The Abbe had obtained bulls from Rome in regard to the curacy at Montreal. These disturbed the mind of the Vicar Apostolic, and he wrote to the Pope regarding the jurisdiction of the Archbishop of Rouen. The result was not ambiguous.

* Abbe Faillon gives the documents in full.

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"The Holy See annulled the obnoxious bulls; the Archbishop of Rouen renounced his claims, and Queylus found his position untenable. Seven years later, when Laval was on a visit to France, a reconciliation was brought about between them. The former Vicar of the Archbishop of Rouen made his submission to the Vicar of the Pope, and returned to Canada as a missionary. Laval's triumph was complete, to the joy of the Jesuits, silent, if not idle, spectators of the tedious quarrel."*

To Mgr. Laval must be ascribed the position of father of the Canadian Church. In 1663 he founded the seminary of Quebec, which was confirmed by letters patent from Louis XIV., and three years later he consecrated the parish church of Quebec. On the occasion of his visit to France in 1674, he was named Bishop of Quebec and immediate suffragan of the Holy See, and the revenues of the Abbey of Meaubeac were united to the diocese of Quebec. In 1684 he established a chapter in his episcopal city, and four years later retired, leaving the Abbe de St. Valier as his successor. On the day after Mgr. Laval had retired, his successor was consecrated, though the bulls for his appointment and the letters patent confirming it had been issued some months prior to that time. These letters, issued in 1687, confirm the creation of the diocese of Quebec.

St. Valier had been Almoner to the king when Laval went to France for a successor in 1684, and it is ascribed to him that he tried to undo much of the good his predecessor had effected in opposing the kingly pretensions.† The mere fact

*De Talon says: "The ecclesiastical state is composed of a Bishop having the title of Petrac *in partibus infidelium* and preserving the character and authority of Vicar-Apo tolic." The extract made by Parkman is all that is material in these papers.

† It is said that the aim of this bishop was to place the Church in Canada on the footing of the Church in France; but, as Parkman says on this, nature as well as Bishop Laval threw difficulties in the way. He effected nothing.

of his being almoner suggests a favorite of the king; on him devolved the right of advising the crown as to the nomination to bishoprics. In 1685, two ordinances were passed which deserve to be noticed. In the commission to Denonville the religion of the governor is for the first time specially mentioned, it being required that he profess "the Catholic apostolic and Roman religion." It is significant that this was subsequent to the death of Colbert, the Protestant Prime Minister of France. In March, 1685, an ordinance issued in which "the king wished to maintain in Canada the discipline of the Catholic Apostolic and Roman Church."

In 1695, during the episcopacy of St. Valier, the jurisdiction concerning ecclesiastical matters was thus defined: "The hearing of cases concerning the sacraments, religious vows, the divine office, the ecclesiastical discipline, and other matters purely spiritual, shall belong to the judges of the Church. We direct our officers and our Courts of Parliament even, to leave these cases to them, and further to send back to them without exercising any jurisdiction therein, the cognizance of any such case, unless where an appeal has been lodged from judgments, ordinances or procedure in matters relating to succession or the estate of a deceased person or his children."

On the death of St. Valier, in 1727, a question arose as to whom should be entrusted the conduct of his obsequies. Mgr. de Mornay, some dozen years before that date, had been appointed coadjutor to Bishop St. Valier, under the title of Bishop of Eumenea in Phrygia. He had taken up his residence at Cambrai, and, as a matter of fact, never came to Canada. One of his first acts, however, after his succession to the See of Quebec, in May, 1728, was the nomination of Mgr. Dosquet as his coadjutor. On the death of St. Valier the Quebec chapter assembled and appointed M. Bollard as

Vicar-General, in spite of the fact that Mgr. Mornay exercised that charge. A claim was put forward by M. de Lotbiniere, as archdeacon, and a lengthy ordinance appeared under the direction of the intendant, Dupuy. He was a lawyer of the Gallican school, whose great ambition was to make the superior council at Quebec a reduced copy of the parliament at Paris.* With great prolixity, an ordinance of the 4th of January, 1728, prescribed the proceedings of the bishop's funeral. Two days later, a canon of the Cathedral caused a *mandement* to be read in all the churches protesting against this intervention of the civil power, whereupon the incensed intendant on the following day issued another ordinance which bears exactly on the question in hand. It is in the true Gallican spirit.

It sets out by declaring that the Church is in the State, making part of it and supported by it, and that the State is not in the Church, but is on the contrary able to seize the Church's revenues.† It then refers to the Declaration of the French clergy in 1682 and the rendering to Cæsar what is due to Cæsar, and to the divine right of kings and the impiety of resisting divine ordinances, and follows this up with an elaborate eulogium of the clergy in France. Finally it deals with the case in hand, reproves the authorities of the Cathedral at Quebec and forbids the publication of the *mandement* in any church in the colony. The refusal of the cures to obey these orders of the king was declared to entail the loss of their temporal revenues.

If these ordinances of the council had taken effect, or had not been questioned, they would be strong evidence of the

* As to the nature of the Parliament of Paris, hear what Count de Maistre says of it. See Appendix A.

† See original in the *Quarterly Review*, July, 1886, or in Doutré and Lareau's History of the Law in Quebec.

existence and toleration, the actual establishment indeed, of the "liberties" of the Gallican Church in Canada. But the governor, M. de Beauharnois, took the most decided stand against the action of the intendant, Dupuy; he annulled the obnoxious ordinance and had his own decrees for their reversal executed with the aid of the military. Cardinal Fleury, at home, had procured the dismissal of Dupuy; and although the Governor may have acted in a high-handed way, as Mr. Garneau says, the ordinance of the 17th of September, annulling the proceedings of Dupuy, was confirmed by Maurepas, the French Secretary of State. Mr. Garneau thinks that the governor took sides more strongly in favor of the clergy than ever his predecessor took against them. But unquestionably it was a critical time in the history of the Church. Garneau's account is, to say the least, meagre, and not at all marked by the calmness that should pervade the treatment of such delicate subjects amongst his countrymen. Mr. Doutre is forced to say: "The council accordingly found itself in opposition to the governor and to the majority of the clergy. The immoral Louis XIV., for the sake of appearances, made use of the Cardinals and gave to the clergy an immense influence in the kingdom. The intendant Dupuy, seeing the council overthrown, sent in his resignation in anticipation of his dismissal." This great and indisputable fact remains. In 1728, in La Nouvelle France, the declaration of 1682 was expressly referred to and relied upon in an official State document; and subsequently, within the same year, and as part of the same public affair, this document was officially, publicly, and with unusual notoriety, annulled and rendered void. The French authorities approved of this course.

The history of the declaration is in perfect accord with this view. It was never registered or put in force in Canada.

This cannot be disputed. In the two large volumes compiled under the direction of the Parliament of Canada, in 1801, no such registration can be found; nay more, no official or other state paper from France has the most remote reference to it. It can be pretty confidently asserted that no official or other state paper in Canada, except the one already referred to as having been cancelled, is to be found. If not registered, then, according to the French law, it would be void. "It did not require registering," says Mr. Doutre, "because it did not emanate from the king." It is true that the declaration did not emanate from the king as a state paper—it has been traced pretty clearly to Colbert—but the edict directing that the doctrines of the four propositions should be taught and maintained in the schools of the kingdom, was an edict emanating from the king. Mr. Doutre feels the weakness of a want of registration, however, and adds: "The most incontestable proof that it is possible to give that the bishops of new France are conformed to the declaration of 1682, is in the installation of Mgr. Pontbriand."

That admission, in view of what we have seen, will bring us safely down to 1714 without any Gallican liberties in Canada. Mr. Doutre is the great champion of the Gallican Church, and if there is anything in favor of his theory until Bishop Pontbriand's time, it is likely he made the most of it.

The See of Quebec was declared from its foundation to be immediately dependent on the Holy See. The claim of nomination was no special feature of the Gallican liberties, it was exercised in Europe in ancient times, and exists to day.*

* Archbishop Spalding, in his *Miscellanea*, says: "Princes never had the right of nomination to bishoprics without the consent and concurrence of the Church. The thirtieth canon of those called Apostolic—believed by the learned to exhibit pretty accurately the discipline of the first three centuries of the Church—pronounced sentences of deposition against bishops who received their Sees from princes. The

Bishop Laval was no Gallican, and was opposed to Gallican principles ; Bishop Saint Valier was necessarily something of a royalist, but was unable to nationalize the Church ; he could not even establish an irremovable cure. We have seen the defeat of Gallicanism after his death—a defeat where success, if possible, was the most likely. During the episcopates of Mornay, Dosquet, and L'Aube-Rivière, there is no sign of any royal, or national, or Gallican tendency ; but we are told that the installation of the last bishop under the French regime established the most “ incontestable proof of the recognition of the four articles of 1682.” The first bishop was confessedly not within these articles, as his installation was many years before they were drawn up—the last one, it seems, is the only one possible to be accounted as Gallican.

Bishops in French times, and later under English sway, were royal counsellors as well as spiritual heads. They therefore took an oath such as privy counsellors at this day take. If Bishop Pontbriand, or any other bishop before or since his time, took an oath with any reference to Gallican liberties, or adverted even to the existence of such things, there would be an argument worth considering. Now, what are the facts about Bishop Pontbriand ? After the king had seen the “ bulls and apostolic provisions for the bishopric of Quebec,” as the installation document says, “ and not being able to discover anything in them, either derogating from our laws,

fourth canon of the great Council of Nice, held in 325 regulates the manner of appointing bishops by the prelates of the province, or at least three of them, without even alluding to any right of the people or of prince in the matter. The twenty-second canon of the Eighth General Council, held at Constantinople in 879, goes still further and pronounces an anathema against any lay prince who would interfere in the “ election or promotion of any patriarch, metropolitan or bishop so as to prevent its canonical freedom.” Many other authorities could be produced to prove that the claim set up by the princes of the 11th century not only had no sanction from the Church, but was in the face of all its rights and laws. By being liberal to the Church, temporal princes acquired no right to enslave it, and to introduce into its bosom the feudal on the ruins of the canon law.

indult, concession, and concordat between the Holy See and our kingdom, or from the privileges, franchises, and liberties of the French Church, we have admitted the said bishop to take an oath of fidelity that he owes us by reason of the said bishopric, as it appears by a certificate," etc.*

Now all this is manifestly in favor of the view we are presenting. As to the bishopric of Quebec, the bulls and apostolic provision for its erection were issued on the 1st of October, 1674, and the negotiations for obtaining a bishopric for Canada began in 1657. The king wrote to the Pope frequently about it, and he was waiting, as the official documents show, until "it would be pleasing to our Holy Father the Pope to establish one there."

Mgr. Laval was consecrated Bishop of Petraea in 1659, and the delay was really due to the fact, as Parkman tells, whether Laval should be attached to the Gallican archbishop of Rouen, or should be directly under the authority of the Pope. Between 1659 and 1674 Mgr. Laval was named Vicar Apostolic, which, as every one knows, is an office immediately depending on the Holy See. When the bulls were published in 1674, this fact was recited in them.

Now, in 1741, when Bishop Pontbriand received the mitre, he received it both with reference to the king and the Pope, exactly as did Bishop Laval in 1674; and this is not only the meaning, but the precise wording of the installation. Further, if the articles of 1682 were in force, either in France

* The oath of Bishop Pontbriand is as follows: "Sire, I Henri-Marie Du Breil de Pontbriand, Bishop of Quebec swear and promise your Majesty that so long as I live I will be your faithful and obedient subject, that I will as far as in me lies work for the good and service of the State, and will not entertain any council, design or enterprise to the prejudice of the same, and that if any such comes to my knowledge I will make it known to your Majesty.

[Signed]

H. M. DU BREIL DE PONTBRIAND,
Bishop of Quebec.

or in Canada, if no reference were made to them, it would be strange, but it might pass. When, however, the king says that "the bulls and apostolic provisions of the diocese of Quebec are in accord with the laws, indult, concession, and concordat" between France and the Holy See, it is inconsistent with these words to suppose the existence of the articles of 1682, which had been, as long as they were in force, directly opposed to the concordat of 1515, and to all the relations with the Holy See.

This document is, therefore, evidence against those who contend for the Gallican character of the Church in Canada; but even if it were the contrary, it has been referred to here for this reason: it is the only document in force referred to in the edicts, ordinances, *arrêts*, etc., in France or in Canada, in ecclesiastical or "Gallican" state papers, in which the phrase, "Liberties of the Gallican Church" appears. This state paper drawn up by Dupuy in 1728, and already referred to, relies on the articles of 1682, but was annulled. In no one of the commissions to governors or intendants is there any reference to the Gallican Church. In the ordinances or patents respecting the bishops, the seminary, the Jesuits, or other religious bodies, there is not a word pointing to any Gallican Church or any special customs, liberties, or privileges.*

The state papers drawn up in reference to the cession are further evidence of the position for which we are contending. The VIth article of the capitulation of Quebec provided that "the Catholic, Apostolic, and Roman religion should be main-

* In a series of questions put for the decision of the King in 1692, on some disciplinary matters as to precedence in the Church, an answer is given to one to the effect that the case be governed "par les usages de l'Eglise de France." It is needless to say that it would be unfair to draw a general deduction from phrases like "l'Eglise de France," or "l'Eglise Gallicane," when used in a sense of certain customs obtaining in France and necessarily introduced there. In any event this was before the annulling of the four propositions by Pope Alexander III.

tained," the XXVIIth article of the Capitulation at Montreal makes provision that "the Catholic, Apostolic and Roman religion shall subsist in its entirety," and then the Treaty of Paris in its IVth clause secures "the Catholic religion. . . according to the rites of the Church of Rome." Attorney-General Marriot, who went very minutely into the whole question, gave it as his strong opinion that the Church in Canada was the Church of Rome without any restrictions of the Gallican Church. He wrote at the time, and at the express request of the Government of England. He was employed to draft a constitution for the "new" subjects of His Majesty George III., and he was regarded as one of the most learned doctors of the law in the kingdom.

The Church, then, in Canada began under the protection of the Archbishop of Rouen, and for nearly fifty years was under his charge. A vicar apostolic was then put over the country; the archbishop lost all control of the ecclesiastical affairs, and Quebec became immediately dependent on the Holy See. Prior to this time Cardinal Richelieu, an adherent of the Roman as opposed to the Gallican tenets, took charge of the colony.†

In the third quarter of the century the diocese was erected and placed under Roman as opposed to Gallican control. From 1682, the date of the Gallican articles, until 1693, when they were annulled, no edict is to be found transplanting them into Canada, and no French or Canadian edict ever referred to them as being in force in this country. The Pope, it is said, claimed that it did not apply to a country like Canada. The Superior Council at Quebec has no reference to it. In 1728 an Attorney-General attempted to make it appear that

† Ranke says: "Richelieu found it advisable, on the whole, to attach himself as closely as possible to the Papacy; in the disputes between the Roman and Gallican doctrines, he now adhered to the Roman and abandoned the Gallican tenets."

it was French law, and founded an edict upon it, but the edict was annulled, and he was dismissed from his position. Finally, in 1741, the last bishop who owed allegiance to France was installed with special reference to the fact that the diocese of Quebec was created by the bulls and apostolic provisions of Clement X. in 1674. In 1763 Canada passed out of French control, and in the capitulation at Montreal, some years before, the French representatives asked that the nomination of French bishops, etc., be reserved to the French king, and the absurd request was very naturally refused.

The rights of the *régale* never could have any application to Canada except as to the presentation, which has been a law at all times in France—so long as the Church has existed there. How was this in Canada? Every bishop after Laval had his coadjutor, who was appointed *in partibus infidelium*, just as Laval himself originally had been. The consent of the king was superadded. There was never a vacancy in point of fact, and there were no revenues for the king to seize upon.* These are the three features of the *régale*, and it cannot be intelligently argued that the right applied to Canada. It did not arise in France until after 1670.

Then the *appel comme d'abus* does not apply to Canada. Sir Robert Phillimore, in giving judgment in the Guibord case, on the contention that the court of Queen's Bench, created in 1794, possessed the power of enforcing the privileges of the Gallican Church by proceeding in the nature of an *appel comme d'abus*, says: "Considering the altered circumstances of the Roman Catholic Church in Canada, and the non-

*The colony was so poor, and the church revenues so insufficient, that the king had to defray the expenses connected with procuring the bulls from Rome in Bishop Laval's time. When Canada fell into the hands of the English, the government granted an annuity to the bishop to maintain him in suitable dignity. A vacant benefice in Canada would not afford any *regale*. The bishops had the patronage by a royal arret, dated 27th March, 1699.

existence of any recognized ecclesiastical courts in that province, such as those in France, which it was the office of an *appel comme d'abus* to control and keep within their jurisdiction, and the absence of any mention in the recent code of procedure for Lower Canada of such a proceeding, their lordships would feel considerable difficulty in affirming the latter of these propositions." The ordinance of 1695, set out above, would seem to be decisive of this question.

In ordinary language, this means that there was no such appeal; that there cannot be an appeal where there is no court to be appealed from. His lordship then proceeded to show that a number of cases decided in Lower Canada, supposed to be appeals of this nature, were not so in reality. And one hundred years before this judgment of the Privy Council, Chief Justice Hey reported to the home government that so far as appeals from the ecclesiastical to the civil tribunals were concerned, "no such thing as ecclesiastical courts existed in the province." The governor general, Carlton, acquiesced in this view. However it may be as to the existence of appealable courts, the position was taken that the tribunal capable of entertaining such appeals was not the Superior Council at Quebec, and this position was upheld on a reference to the French court. The ordinance of 1695, already cited, expressly enjoins that, except in appeals respecting succession to property or in the administration of estates, the civil authorities were not to interfere with the judges of the Church in matters of a spiritual nature. That the courts of the parliament of Paris might have been able to entertain such appeals in virtue of this *ordonnance*, from the judges of the Church, may be fairly argued; but by every canon or legal construction of a written law, there could be no appeal to any other tribunal, and so no appeal to the Superior Council at Quebec.



CHAPTER VI.

The Capitulations of Quebec, 1759. Montreal, 1760.

ON the 10th of February, 1763, there was signed at Paris the definitive Treaty of Peace between France, Spain, and England. This treaty besides terminating the Seven Years' War, contains an adjustment of the North American possessions of these three nations. Prior to this, the English ruled over the Atlantic seaboard provinces—Acadia, afterwards divided so as to comprise New Brunswick and Nova Scotia, and the territory lying to the south of it, running westward from the Atlantic Ocean, north of Florida, to Louisiana and the Mississippi River. The French possessions were Canada, along the banks of the River St. Lawrence (except the Gulf Islands) and the country north of the Great Lakes and westward, including part of the present State of Michigan, to the wilderness beyond. Northward they held sway to the limits of the Hudson Bay Territory. Besides these northern possessions, named New France, the French held a chain of forts running south from Canada to New Orleans; and whether or not these corresponded to the Mississippi, they claimed to own all westward—all to the rear—of the English colonies. They owned the substantial province of Louisiana, extending east to Georgia and Florida, and northward about a third or more of the distance between the Gulf of Mexico and the Great Lakes of Canada.

Florida under this treaty was given up to England by the Spaniards, and Canada by the French, leaving the western

territory and its forts undetermined; subsequently the French reasserted their claim to these; but, by the Peace of Versailles, 1783, the French and English, as is well known, lost the entire territory south of Canada.

The fall of Quebec, the stronghold of the French, was in the year 1759, and in the following year the capitulation at Montreal surrendered the whole of Canada to the English. It is true that the effort of Pontiac was made subsequently (but before the Treaty), yet the cession was complete in 1760 as a military, though not as a diplomatic, fact. A rupture having occurred between England and Spain, a period of over three years passed before all parties agreed to settle their then impending difficulties. Canada, in the meantime, lived under a military rule—the “reign of the soldiery;” and the law, if any, in all matters, was to be found in the terms of capitulation between General Amherst and Vaudreuil made at Montreal, in 1760.

The terms of capitulation at Quebec and at Montreal are not of any real value, except in so far as they throw light upon a similar question in the Treaty of Paris. It is much to the credit of the French in Canada, and correspondingly uncomplimentary to their enemy, the English, that in every treaty between these two powers in this country, the French stipulated for the free exercise of their own—the Roman Catholic religion. About 130 years before the date we are now considering, the French surrendered Canada to Sir David Kirk, the English commander, and stipulated for these terms. The same was done, in Quebec, between De Ramezay and the English commanders, and in Montreal the matter was gone into more fully. The contracting or negotiating parties were not on very good terms, and the French commander complain-

ed bitterly of the want of courtesy shown him and his troops by his opponents. The demands and replies have been used a good deal by those who wish to minimize the power of the Church in Canada, yet it could not be argued but that these terms became *merged*, as the lawyers say, in the subsequent treaty.

The following articles and the replies thereto are useful on other than historical grounds :

Article 27. "The free exercise of the Catholic, Apostolic, and Roman religion shall subsist entire, in such manner that all the States and people of the towns and country places and distant posts, shall continue to assemble in the churches, and to frequent the sacraments as heretofore without being molested in any manner, directly or indirectly. These people shall be obliged, by the English Government, to pay to the priests the tithes, and all the taxes they were used to pay, under the Government of His Most Christian Majesty.

Answer. "Granted, as to the free exercise of their religion. The obligation of paying the tithes to the priests will depend on the King's pleasure.

Article 28. "The chapter, priests, cures, and missionaries shall continue, with an entire liberty, the exercise and functions in the parishes of the towns and country.

Answer. "Granted.

Article 29. "The grand vicars named by the chapter to administer the diocese during the vacancy of the episcopal see shall have liberty to dwell in the towns or country parishes, as they shall think proper. They shall at all times be free to visit in different parishes of the diocese, with the ordinary ceremonies, and exercise all the jurisdiction they exercised under the French dominion. They shall enjoy the same rights in case of death of the future bishop, of which mention will be made in the following article.

Answer. "Granted, except what regards the following article.

Article 30. "If, by the treaty of peace, Canada should remain in the power of His Britannic Majesty, His Most Christian Majesty shall continue to name the bishop of the colony, who shall always be of the Roman communion, and under whose authority the people shall exercise the Roman religion.

Answer. "Refused.

Article 32. "The communities of nuns shall be preserved in their constitution and privileges. They shall continue to observe their rules. They shall be exempt from lodging any military, and it shall be forbid to trouble them in their religious exercises, or to enter their monasteries; safeguards shall even be given them if they desire them.

Answer. "Granted.

Article 34. "All the communities, and all the priests, shall preserve their movables, the property and revenues of the seignories, and other estates which they possess in the colony, of what nature soever they may be. And the same estates shall be preserved in their privileges, rights, honors, and exemptions.

Answer. "Granted."

The capitulations at Quebec are contained in eleven short articles, of which the sixth only is material for our purpose. It is as follows:

"That the exercise of the Catholic Apostolic and Roman religion shall be preserved; that safeguards will be given to religious houses of ecclesiastics, male and female, particularly to his lordship the Bishop of Quebec, who, filled with zeal for religion and charity for the people of his diocese, desires to remain there permanently, to exercise freely and with the decency that his state and the sacred mysteries of the Catholic Apostolic and Roman religion demand, his episcopal authority in the city of Quebec as long as he will judge it suitable, until the possession of Canada may have been decided by a treaty between His Most Christian Majesty and His Britannic Majesty."

The answer to this is not, as are the other articles, simply "Granted," but is as follows:

"The free exercise of the Roman religion, safeguards granted to all religious persons, as well as to M. the bishop, who can freely and

with decency exercise the functions of his state as long as he will judge it suitable, until the possession of Canada may have been decided between His Britannic Majesty and His Most Christian Majesty."

After the capitulation at Montreal, the English ruled New France for the next three years under a martial system. In Quebec, at all events, the decencies were observed towards Bishop Pontbriant and the clergy. No one expected the then state of things to continue, and perhaps, under all the circumstances, the rule might have been less objectionable. The people looked forward to the treaty, and faith was expected to be kept under the provisions of the capitulation.



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CHAPTER VII.

The Treaty of Paris, 1763.

THE negotiations for the treaty begun in 1761 were mainly intrusted to two representatives from France and England who exchanged protocols, etc., as is the custom in such formal proceedings. Mr. Pitt represented the English nation—the French side was intrusted to the Duke de Choiseul.

Mr. Garneau, in his History of Canada, states that the Clergy of Quebec drew up two memorials on ecclesiastical affairs in Canada, one for the Duke de Nivernois, the other to the Duke of Bedford—these nobles being the two chief diplomatists employed in settling terms of pacification between France and Great Britain. He refers also to one of the Canadian agents, Etienne Charrest, who was charged to negotiate in the article of religion as expressed in the treaty of Paris, and who wrote several times on that subject to Lord Halifax, Secretary of State.

It cannot be supposed, therefore, that each party did not minutely understand the business in hand, or what was meant by the free exercise of religion; nor was any one ignorant of the fact that the laws of Great Britain—the penal laws—were aimed directly at the Roman Catholic religion, and in fact that there was no toleration of it in England at the time. The first memorial from the English contained no reference to

this question of religion. Subsequently a French memorial of Propositions was submitted of which the second clause is as follows:

“The King, in making over his full right of sovereignty over Canada to the King of England, annexes four conditions to the cession.

“1st. That the free exercise of the Roman Catholic religion shall be maintained there, and that the King of England will give the most precise and effectual orders that his new Roman Catholic subjects may as heretofore make public profession of their religion according to the rites of the Roman Church.”*

To this, so far as religion is concerned, Mr. Pitt made no objection, and in the ultimatum of France in reply to England, 5th August, 1761, it is reasserted that his majesty “will not recede from the conditions he has annexed to the same memorial relative to the Catholic religion.”

An answer to this ultimatum came on the 16th August. *Inter alia* it says: “As to what concerns the public profession and exercise of the Roman Catholic religion in Canada, the new subjects of his Britannic Majesty shall be maintained in that privilege without interruption or molestation.”

The rupture with Spain, and some differences in other articles of the treaty, delayed its conclusion during the following year.

In November, 1762, the preliminary articles of peace were signed at Fontainebleau between Great Britain, France and Spain, and in the 2d article “his Britannic Majesty on his side agrees to grant to the inhabitants of Canada the liberty of the Catholic religion. He will in consequence give the most exact and effectual orders that his new Roman Catholic sub-

*The other conditions have no reference to the subject here discussed.

jects may profess the worship of their religion according to the rites of the Roman Church as far as the laws of Great Britain permit."

The same words in Article XIX. are used for the cession of the Spanish possessions.

Mr. Fox rose in the House and moved the adoption of an address recommending the treaty.

Mr. Pitt violently opposed almost every part, but made no reference to the change of the words added after he himself had ceased negotiations respecting it some months before. That would not have been a popular argument. The House accepted the address, 319 being for and 65 against it.

The words of the treaty, as finally agreed upon, do not differ from the foregoing, except that the word "precise" is used for "exact" in the official reports. The following is the celebrated 4th article :

"IV. His most Christian Majesty renounces all pretensions which he has heretofore formed or might form to Nova Scotia or Acadia in all its parts and guarantees the whole of it, and with all its dependencies to the King of Great Britain. Moreover his most Christian Majesty cedes and guarantees to his said Britannic Majesty in full right, Canada, with all its dependencies as well as the Islands of Cape Breton, and all the other islands and coasts in the Gulf and the River St. Lawrence, and in general everything that depends on the said countries, lands, islands and coasts, with the Sovereignty, property, possession, and all rights accrued by treaty or otherwise with the most Christian King, and the Crown of France have had till now, over the said countries, islands, places, coasts, and their inhabitants, so that the most Christian King cedes and makes over the whole to the said King and to the crown of Great Britain, and that in the most ample manner, and for and without restriction and without any liberty to depart from the said cession and guaranty under any pretence, or to

disturb Great Britain in the possession above mentioned. His Britannic Majesty on his side agrees to grant the liberty of the Catholic religion to the inhabitants of Canada; he will consequently give the most precise and effectual orders that his new Roman Catholic subjects may profess the worship of their religion according to the rights of the Romish Church, so far as the laws of Great Britain permit."

The last article, XXVI., reads :

"Their Sacred Britannic, Most Christian and Catholic, and Most Faithful Majesties promise to observe sincerely and *bona fide* all the articles contained and settled in the present treaty; and they will not suffer the same to be infringed directly or indirectly by their respective subjects; and the same High Contracting parties generally and reciprocally guarantee to each other all the stipulations of the present treaty."*

Now, what is the meaning of the words: "the liberty of the Catholic religion," "to profess the worship of their religion," and how are they affected by the words, "so far as the laws of Great Britain permit?" The reader will say, Why, in 1763, the English penal laws were in full force against Catholics. There was no Emancipation Act for half a century or more after that. The laws of Great Britain did not permit any exercise of the Roman Catholic religion in 1763.

There is no other section in the Treaty respecting Catholics in this part of America. This section, however, has substantial, potential guarantees within its four corners. Taking up the last words of the section first, it will be perceived that the freedom of the Catholic religion is secured to Catholics in Canada, unless it happens that by the law of Great Britain, the penal laws against Catholics had been previously extended to Canada. The laws of Great Britain do not extend alike to all the British possessions, unless expressly extended to these

**Chalmers' Treaties et passim.* The remainder of the 4th section refers to permission to Canadians to return to France, and was in force only eighteen months.

possessions. It is important to remember that. The penal laws extended to Ireland, but they did not, in 1763, or before or since, extend to the colonies. Canada fell into the list of British colonies in 1763, and the penal laws against Catholics did not reach them. Great was the dismay and confusion of the 600 English emigrants in Quebec, when the highest legal luminaries in the land and out of the land, gave it as their opinion that the "new subjects," the French Catholics, were not affected by those Penal laws that are aimed at Catholics in the old country. Then the musty old statutes were dislodged from their shelves, the black letter jurists of the Stuart and Tudor periods were ransacked, and not until they came to the first statute of Elizabeth was there any comfort found. The statute of 1st Elizabeth, Cap. 1, was the only statute omnipotent enough to reach the Colonies; it provides that the supremacy which formerly vested in the Pope of Rome in spiritual matters should, thereafter, be vested in the Queen of England, and this Act was expressly extended to the Colonies. The construction was a narrow, strained and illogical one and utterly at variance with the spirit of the Treaty of Paris.

The parties who drew up and settled the terms of the Treaty had no idea that the statute of Elizabeth applied. That they were aware of the Penal laws against Catholics in Great Britain and in Ireland there is no doubt. Canada, some 130 years before this Treaty, had passed out of the French control into English hands, for about three years, and there was a provision then to the same effect as the present—that the freedom of their worship should be allowed to the Catholics. The language of the Treaty, so far as religious guarantees are concerned, was intended to prevent future legislation affecting the freedom and exercise of the Roman Catholic religion by the Catholics of Canada.

Attorney-General Maseres, writing about ten years after the treaty, says:

“Two senses may be put upon these words, ‘as far as the laws of Great Britain permit.’ They may either be supposed to mean that the Canadians shall be at liberty to profess the worship of the Roman Catholic religion as far as the laws of Great Britain permit that worship to be professed in England itself, or they shall be at liberty to profess that worship as far as the laws of England permit it to be professed in the Dominions of the Crown of Great Britain that are not parcel of the realm, such as Minorca, Senegal, the West India Islands, and the colonies of North America. The former of these senses I acknowledge to be too narrow to be put upon these words, because it would in a great measure destroy the grant of the liberty of professing the worship of the Romish religion which these words were only intended to qualify and restrain; because in England itself the laws do not permit the worship of the Romish religion to be professed in any degree.

“We must therefore have recourse to the latter sense above mentioned and suppose these words to mean that the Canadians should have the liberty of professing the worship of their religion as far as the laws of England permit it to be professed in the outlying dominions of the crown that lie without the realm. . . .

“Now, upon making this enquiry we shall find that though most of the penal and disqualifying statutes passed against the professors of the Romish religion relate only to England and Wales, yet the Act of the first of Queen Elizabeth, cap. i., which is entitled ‘*An Act to restore to the Crown the ancient jurisdiction over the state ecclesiastical and spiritual and abolishing all foreign powers repugnant to the same*,’ which is commonly called the Act of Supremacy, does expressly relate to all the Queen’s dominions as well as to the realm of England, and is even extended by positive words to such countries and places as should at any future time become subject to the crown of England.”

He then sets out the effect of this statute of Elizabeth, and adds in conclusion that “the British Nation is bound by that article to grant to the Canadians the liberty of professing

the worship of the Roman Catholic religion only so far as is consistent with that statute."

Besides the construction put upon the words of the treaty by the English Parliament, which is substantially that of Mr. Maseres, eminent lawyers have given opinions thereon.

In reference to it Attorney-General Wedderburne, afterwards a Lord Chancellor of England, says: "True policy, dictates, then, that the inhabitants of Canada should be permitted freely to profess the worship of their religion; and it follows of course that the ministers of that worship should be protected, and a maintenance secured for them."

And Attorney-General, afterwards Lord, Thurlow, says: "The free exercise of their religion by the laity and of their function by their clergy was also reserved."

As a matter of fact it would be of little account, after the Quebec Act was passed, what any legal opinion might have been as to the meaning of these words—the Act thenceforth was the guide. The Act, it is true, could not abridge the effect of the treaty so far as the new British subjects were concerned—the subjects who were the subject of the treaty; but the act could, and probably did, enlarge the meaning of the words for the benefit of these subjects. For instance, it might have been a condition that each of the three religious orders then in Canada should receive one thousand acres of land. No act could be passed, without setting at naught the law of nations, giving them only five hundred acres, but an act giving them two thousand would be valid. The Quebec Act took the sting out of the objectionable words in the treaty. It gives probably the most favorable construction that would be put on the treaty, and indeed a much less equitable inter-

pretation would have suited the English party in Canada and in some of the other American provinces. The statute, however, imposes no insuperable difficulty; it requires all priests and other ecclesiastical persons to take the oath of Supremacy, but, in the event of their refusing, it annexes no penalty beyond the deprivation of their benefices or other spiritual promotions. The question therefore would not arise until the state held the property of the Church, and in Lower Canada, at all events, the question did not arise. The Quebec Act, as will be seen presently, provided an oath in lieu of the one in the Act of Elizabeth,* and though many difficulties arose under the Quebec Act, they terminated in favor of the Church."

In Canada the power of the Treaty of Paris is to-day not so much a thing to be invoked against penal legislation on the statute book, of which there is none, as it is a shield against any threatened penal legislation—which some think there possibly might be without it. It is in force now as it was in 1763. It is a treaty of Cession and these provide for a permanent state of things. The obligations under treaties are not extinguished until their objects are satisfied, or until a state of things arises through which they became void, though they temporarily or definitively cease to be obligatory when a state of things arises through which they are superseded or become voidable. For instance, treaties are void when they become impossible of execution, when they are disposed of by consent of the parties when they have satisfied the object of the compact, or when they are incompatible with undisputed law and morals. But recent high authority is in favor of ex-

* By an act passed in the first year of the reign of William and Mary, the *Bill of Rights*, the oath of supremacy as provided in the Act of Elizabeth was taken away and another of a milder character substituted. It is, however, much more objectionable than the one in the Quebec Act, which is indeed no more than an oath of allegiance.

cluding, as tests of voidability, the fact that a treaty may conflict with the rights and the welfare of the people, or that it may contain a gratuitous cession or abandonment of an essential national right, or be incompatible with its development.* If it is observed by both parties, is consistent with their rights of self-preservation, and retains for them freedom with respect to its subject-matter, it is a binding agreement, and is as much a law for them as municipal law is for the individual. This agreement, says Bowyer in his "Public Law," must be inviolably kept by virtue of that maxim of natural law which requires us to perform our promises. A treaty under the United States Constitution is the supreme law of the land, and binds the judges in every State, notwithstanding anything in the laws or Constitution of the State to the contrary. It supersedes all contradictory local statutes. It can be repealed only so far as it is municipal, and not then unless its subject-matter is within the legislative power of Congress;† and it is an essential principle of the law of nations that no power can be released from the engagements of treaties or modify their stipulations, except with the consent of the contracting parties amicably obtained.‡

* Hall's International Law.

† Taylor v. Morton, 2 Curtis, 454.

‡ At the conference in London in 1871, this principle was recognized by Russia, Austria, Germany, Great Britain, Italy and Turkey. See article by the present writer on the Public Law of the United States in the *American Catholic Quarterly Review* for July 1887.





CHAPTER VIII.

The Quebec Act, 1774.

THUS stands the treaty, and in the fall of the same year, 1763, a proclamation was issued by George III. referring to the valuable possessions secured by this treaty, and under it were erected four governments under the names of Quebec, East and West Florida, and Grenada. The governments of Newfoundland and Nova Scotia were also referred to, and a general promise given that the colonists could confide in the royal protection for the enjoyment and benefit of the laws of England, until assemblies of the people could be summoned.

There were at this period about seventy thousand inhabitants in Canada, and less than five hundred of these were English and Protestant. The remainder were French and Roman Catholic. The Catholic religion had been the law of the land, and in Quebec at least the British soldiers were ordered to be respectful to the clergy and to the religious processions in the streets. It will be remembered that after Cardinal Richelieu founded the royal government in New France, the governor, the bishop, and the royal intendant practically ruled the province. It is, therefore, to be expected that the Church and its ministers in their time would be respected. Under the comparatively mild rule of Sir Guy Carleton the Catholics had little to complain of on this score.

The people complained somewhat that the terms of the capitulation were not observed, the French as to innovations,

the English that everything was not expressly made to suit their wants. However, the ministers in England urged that their case would be considered as soon as the war—the Seven Years' War—would be at an end, and it came to an end by the treaty which we are now discussing.

Before the treaty, the military rule depended much on the temper of the governor, who, all things considered, was better vastly than those of his countrymen who formed his staff.

The question of the status of the Roman Catholic Church in Canada arose at once as to a successor to Bishop Pontbriant. In 1763 the governor sent M. Cramahé to London to sustain an application in this matter. In 1765 the attorney and solicitor-general, Norton and Grey, expressed their opinion regarding the Church of Canada, that the Catholics of that (now British) colony were not liable to the operation of the disabilities imposed by statutory law on their co-religionists in Great Britain. In 1768 the king issued three mandates to the governor for the appointment of a rector for each of the towns of Quebec, Three Rivers and Montreal. Governor Carleton directed Mr. Maseres, the attorney-general, to prepare a draft commission, which that zealous official did with all promptitude. On consideration of "the peculiar and delicate situation of the province with respect to the article of religion," as Mr. Maseres put it, "his excellency did not think it expedient to grant these gentlemen commissions of this form under the seal of the province, but in lieu thereof gave them licenses to preach and perform divine service according to the ceremonies of the Church of England in the respective parishes of Quebec, Three Rivers and Montreal, under his hand and private seal." The draft was never availed of, and Mr. Maseres in about a year afterwards calls attention to this in certain other papers preserved at the time.

The Proclamation of 1763 promised the people that as soon as it was convenient an assembly would be given the Canadians—the new subjects—and that in the meantime they could rely on the regard of the sovereign for the solution of any difficulties that might arise. This *meantime* lasted for ten years, greatly to the annoyance of the old subjects, many of whom regarded the colony as a place to make money in and regain their shattered fortunes while their past history in England might be forgotten. There is little room for doubt as to the character generally of these noble five hundred; but it is not with them we are concerned, though they made themselves heard more clamorously than the whole French population.

In this interval a chief justice, an attorney-general and some other officials were sent out from England. The attorney-general, Francis Maseres, lived in Quebec for about three years, up to 1769, and retired apparently in disgust to England, where he was appointed to an inferior judgeship. He is the author of certain papers—and violent papers they are—regarding the colony and its laws. These are called the “Maseres papers,” and from them a good deal of inspiration can always be drawn against the French people and their religion.

He and Sir Guy were not of one mind as to the manner of ruling the new possession, but the governor had not only the more sensible plan, but also the one that recommended itself to the home government. Maseres became the spokesman for the English in Canada—he represented their grievances and formulated reports. He even drafted a bill for the better government of Quebec. Under this model document the five hundred colonists referred to were to have full control of Canada, to the exclusion of every Frenchman and Catholic.

In the "draught of an act" for the good government of Quebec, prepared by Mr. Maseres, the members of the assembly would be required to take an obnoxious oath passed in the reign of George II:

"And likewise to make and subscribe the declaration against the Romish doctrine of transubstantiation mentioned in an act of Parliament made in the twenty fifth year of the reign of King Charles II. entitled '*An Act for preventing dangers which may happen from Popish recusants,*' before they are permitted to sit in said assemblies."

Another recital, in the spirit of this one, stated :

"That hitherto it was not practicable, by reason of the general prevalence of the Romish superstition among his Majesty's 'new' Canadian subjects, to summon and call a general assembly."

The draught goes on to enact that in view of these and other things an assembly be called, each member of which should take the oath referred to, and so exclude any Roman Catholics.

"If it should be approved and carried into execution," wrote Mr. Maseres, "I confess I should think the inhabitants of the province would be likely to be governed more happily under it for seven or eight years to come, than under the influence of an assembly of Protestants only, I see no objection to the establishment of one, but the danger of disobliging the Catholics of the province, who are so much superior in number."

Mr. Maseres's plan of a legislative council was so good as to merit the approval of "Mr. Thomas Walker, of Montreal, and Mr. John Paterson, of Quebec, English merchants of eminence settled in those towns," but it did not commend itself to the governor nor to the British ministers. His proposed council was to consist of thirty-one members, all Protestants and thirty years old:

"Because if Roman Catholics are admitted into the council, there is no good pretence for not having an assembly agreeably

to the King's proclamation and commissions to General Murray and General Carleton."

The council afterwards established, it may be remarked, was comprised of seventeen members, seven of whom were Catholics.

"To consist either of seventeen members or of twenty-three members, or of any intermediate number of members at the King's pleasure. And they may be all papists or even popish priests if the King shall so please, and of any age the King shall please above twenty-one years."

Mr. Maseres might be pardoned for writing, as he did, a "remark" of ten pages upon this.

The petitions of the London Board of Trade and of the English at Quebec were entrusted to him, and in 1773, after a ponderous mass of materials from French and English petitions were in the hands of the home ministry, the government set to work to frame an act for their new and old subjects of Canada.*

The Earl of Dartmouth introduced the bill into the Lords, and Lord North assumed the task of defending it in the Commons. It may save some speculation here if we anticipate and say that in almost every particular, and certainly in every important one, the British Ministry disregarded the clamor of the now Baron Maseres and his requisitionists, and passed an act much more in the spirit of justice to the French than might have been expected. There were reasons for this

*In the language of the time, the French Canadians were called the "new subjects" of the king.

outside of pleasing the French, as the coming events of 1775 were shadowing the whole continent.

Indeed, the cause of the difficulties at Boston, in 1773, was an error admitted in English councils. Whatever may have been the motive, the English government certainly desired to deal fairly with the French.

The English emigrants, once in America, were intolerant and revolutionary to a great degree, and in Canada they were, at the time about which we are writing, and later, in 1791, the most troublesome and unreasonable of subjects.

The Quebec Act of 1774 was an important measure, and so much so that although anything approaching a Hansard or parliamentary reporter was then in its infancy, we have, thanks to the industry of the then member from Lostwithiel, a very full report of the whole measure—the debates, the evidence taken, and the reports before the committee. These form a volume of 300 pages and are called Sir Henry Cavendish's reports. The fact that such a thing was done is good reason for believing how great an interest was taken in the act itself. Sir Guy Carleton was examined, Chief Justice Hey, a touchy and bigoted Doctor of Laws named Mariott, and many others of less note. Edmund Burke made several good speeches, and we can read the names of Attorney-General Thurlow, Colonel Barré, Mr. Wedderburne, Charles Fox, and others.*

The bill defined the boundaries of the new British province which was thereafter to be known as "Quebec," containing:

* See appendix B for the speeches referred to.

“ All the territories, islands, and countries in North America, belonging to the crown of Great Britain, bounded on the south by a line from the bay of Chaleurs, along the high lands which divide the rivers that empty themselves into the river St. Lawrence from those which fall into the sea, to a point in forty-five degrees of northern latitude, on the eastern bank of the river Connecticut, keeping the same latitude directly west, through the lake Champlain, until, in the same latitude, it meets the river St. Lawrence ; from thence up the eastern bank of the said river to the lake Ontario ; thence through the lake Ontario, and the river commonly called Niagara ; and thence along by the eastern and southeastern bank of lake Erie, following the said bank, until the same shall be intersected by the northern boundary, granted by the charter of the province of Pennsylvania, in case the same shall be so intersected ; and from thence along the said northern and western boundaries of the said province, until the said western boundary strike the Ohio ; but in case the said bank of the said lake shall not be found to be so intersected, then following the said bank until it shall arrive at that point of the said bank which shall be nearest to the northwestern angle of the said province of Pennsylvania, and thence, by a right line, to the said northwestern angle of the said province ; and thence along the western boundary of the said province, until it strike the river Ohio ; and along the bank of the said river westward, to the banks of the Mississippi, and northward to the southern boundary of the territory granted to the merchants-adventurers of England, trading to Hudson's Bay ; and also all such territories, islands, and countries, which have, since the 10th of February, 1763, been made part of the government of Newfoundland, be, and they are hereby, during his majesty's pleasure, annexed to, and made part and parcel of the province of Quebec, as created and established by the said royal proclamation of the 7th of October, 1763.”

This boundary has been given in full because it will be seen to what extent the Quebec Act stretched across the continent the protection of the law in regard to the Roman Catholics. Part of this old province is now in the United States, part in several provinces of the Dominion of Canada other than the present province of Quebec, which, after an interval of 93 years, resumed its old name. It would, therefore, include

Ontario, Manitoba in part at least, and part of the Northeast and Northwest Territories. But it might not include Nova Scotia and New Brunswick, as these became British provinces by the treaty of Utrecht, 1713, and were then undivided and known by the name of Acadia. The English owned Prince Edward Island since 1758. Although the treaty confirmed these provinces to Great Britain, it could scarcely be said that the inhabitants were "new" subjects. However, any one with a map before him can see the extent of the old Province of Quebec; and this much is certain, that for so much of that as had been wrested from the French by the capitulation of 1760, its inhabitants came within the relief given by the Quebec Act.

Attention will now be called to the clause as to religion, which is as follows:

"And for the more perfect security and ease of the minds of the inhabitants of the said province, it is hereby declared that his majesty's subjects, professing the religion of the Church of Rome of and in the said province of Quebec, may have, hold, and enjoy the free exercise of the religion of the Church of Rome, subject to the King's supremacy, declared and established by an act, made in the first year of the reign of Queen Elizabeth, over all the dominions and countries which then did, or thereafter should belong to the imperial crown of this realm; and that the clergy of the said church may hold, receive, and enjoy their accustomed dues and rights, with respect to such persons only as shall profess the said religion.

"Provided, nevertheless, that it shall be lawful for his majesty, his heirs or successors, to make such provision out of the rest of the said accustomed dues and rights, for the encouragement of the Protestant religion, and for the maintenance and support of a Protestant clergy within the said province, as he or they shall, from time to time, think necessary and expedient.

"Provided always, and be it enacted, that no person, professing the religion of the Church of Rome, and residing in the said province,

shall be obliged to take the oath required by the said statute passed in the first year of the reign of Queen Elizabeth, or any other oaths substituted by any other act in the place thereof; but that every such person, who, by the said statute is required to take the oath therein mentioned, shall be obliged, and is hereby required, to take and subscribe the following oath before the governor or such other person in such court of record as his majesty shall appoint, who are hereby authorized to administer the same; *vide* *ibid* :

"I, A. B., do sincerely promise and swear, that I will be faithful, and bear true allegiance to his majesty King *George*, and him will defend to the utmost of my power, against all traitorous conspiracies and attempts whatsoever, which shall be made against his person, crown, and dignity; and I will do my utmost endeavor to disclose and make known to his majesty, his heirs and successors, all treasons and traitorous conspiracies and attempts, which I shall know to be against him, or any of them, and all this I do swear without any equivocation, mental evasion, or secret reservation, and renouncing all pardons and dispensations from any power or person whomsoever to the contrary.*

The clause was carried by a very large majority, and in a few days afterwards the bill passed into the act of Parliament.

Whatever success the French regarded as falling to their side, the English—the old subjects—were sorely disappointed. They were defeated and they knew it. The act, besides what we have referred to, established the French municipal law in Canada as it was formerly—at least for all civil cases. The criminal law of England was in use since the capitulation and

* When this clause was open for debate Mr. William Burke, a kinsman of Edmund Burke, said, "I do not remember that I ever saw the House of Commons in so sick a situation as it is at present (cry of order! order! order!). I say Sir, that the parliament of Great Britain is in an unfortunate situation. This is the worst bill that ever engaged the attention of the British Council. It is a bill to establish the Popish religion—to establish despotism. There have been instances in human affairs in which for purposes of commerce we have established freedom as far as we could in a certain locality; but to establish Popery—to establish despotism in a conquered province is what we have never done before. . . . The gentlemen who opposed the bill, knowing it was impossible to defeat it, have almost worked themselves to death to make it, as far as they could, consonant to English liberty and the principles of the English Constitution." After much more in the same strain the clause was carried, no other member speaking on it.

was only formally introduced. The bill produced something like a panic at Quebec among the English colonists. All his Majesty's ancient subjects settled in the province of Quebec petitioned against it, and in the following year Lord Camden endeavored to get the act repealed, but the motion was defeated. Mr. Maseres finally gave expression to his feelings by declaring that in his opinion "it had not only offended the inhabitants of the province itself in a degree that could hardly be conceived, but had alarmed all the English provinces in America and contributed more, perhaps, than any other means whatsoever to drive them into rebellion against their Sovereign."

For the next fifteen years, of course, the influx of English speaking citizens was very great, not only by the natural emigration from the British soil, but also by the hegira of those superior souls, the United Empire Loyalists. These came chiefly to the western part of the province of Quebec—what was later called Upper or Western Canada and now the Province of Ontario. In 1790 a dead set was made by all these on the Quebec Act, and a worthy man from Montreal went to England on a like mission as was previously entrusted to Baron Maseres.

This was Mr. Lymburger, who made a long speech in the Commons against the proposed constitutional act brought in by Mr. Pitt. Mr. Fox thundered against the new bill and its provisions, but all chiefly because it did not repeal the old act—the Quebec Act. Mr. Lymburger and his friends met with no better reception than the agents of the British colonists did in 1774. They wanted the province to remain as one province—the English laws to be the law in all cases, and the obnoxious act repealed.

The Pitt ministry divided Quebec into Upper and Lower Canada—they did not touch the Quebec Act except in so far as the new act expressly altered it, and the only concession was a clause for the Protestant clergy. This gave rise to what was called the Clergy Reserve, which, after disturbing the country for over fifty years, was finally wiped out of the statute book.

The Quebec Act has, since the constitutional act of 1791, been recognized in a score of statutes by the provincial and imperial authorities.

As late as the year 1880 a leading judge in Quebec, in giving judgment in a case involving what elsewhere would be a conflict of municipal and ecclesiastical law, says:

“It is unnecessary to establish in this case that the Roman Catholic religion and its full entire and free exercise have been acknowledged in this country and guaranteed by the faith of treaties confirmed by the Imperial Act of 1774, so often cited before our tribunals under the name of the Quebec Act. The most important part of our civil legislation is connected with this fact, and is the necessary consequence of it.”



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CHAPTER IX.

Freedom of Religion to Catholics in Canada. The Supremacy of the Crown. One head for two bodies.

THE Treaty of Paris, it will be remembered, has one apparently inconsistent feature in it—the free exercise of the Roman Catholic religion is guaranteed to the new subjects, “so far as the laws of Great Britain permit.”* The Act of 1774 puts an interpretation upon these words, but the Act itself is not easy to construe. The ablest jurists in England and Canada gave it as their opinion at the time that these words, “so far as the laws of Great Britain permit,” mean so far as the laws of Great Britain permit the exercise of the Roman Catholic religion in the colonies and outlying divisions of the Crown. Parliament adopted this construction. The statute books were then ransacked to discover what, if any, laws in force against the Catholics extended to the colonies. After a search, the most careful as may be imagined, only one statute could be found. This was the Act of Supremacy of Queen Elizabeth—the first Act in the first year of her reign.

The Act of Supremacy arose out of legislation passed in the reign of Henry VIII. to secure that monarch's second

* L'Abbe Ferland narrates that, when Monseigneur Plessis, Bishop of Quebec, was on a visit to Rome in 1819, an interview with Louis XVIII. was arranged for him at Paris. “The audience was private; the King spoke to Monseigneur Plessis with kindness, and put many questions relating to the state of religion in Canada, requested to be remembered in his prayers, and charged him to say to his diocesans that their former sovereign had not forgotten them, and that, if the conditions stipulated for in their favor by the Treaty of Peace were not observed by England, France would not neglect to claim them.”

marriage from being annulled by the Pope. In 1531 all appeals to Rome from English ecclesiastical courts were done away with; and in the next session, in order to cut off all connection with Rome, an Act was passed rendering the papal bulls unnecessary for bishops or archbishops. In this Act the king is recited to be the supreme head of the Church in England. This Act, which in the mind of the king—*the defender of the Faith*—had no appearance of separating the English from the Catholic Church, was the beginning of the great schism; but when the Act was revived in the reign of Queen Elizabeth, some years later, the English Church was no longer Catholic. A church with new doctrines stood in its place, and, as history informs us, every species of persecution that the State could enforce was applied to bring the English people into line with the English Court in religious matters. A church was established by law and the sovereign was its head; those who claimed the Pope as sovereign head of the Church were subject to pains and penalties without number. In process of time the State wearied or became ashamed of persecution—then it tolerated, then it recognized the Pope of Rome as the spiritual head of some English subjects. So long as the rigor of the Act was enforced there was no legal existence for a Catholic. When it was transferred to Canada in 1774 there was just enough of persecution left in it to work mischief.

In the Quebec Act, as has been seen, they, accordingly, introduced the supremacy of the king, but greatly modified the oath, so that there was nothing very objectionable about it. Where the statute applies territorially, then this construction must obtain; and without going into argument on the question, it may be assumed that, where the treaty extends beyond the boundaries of the old Quebec province, the same construction

would be put upon it as upon the statute. To invoke the treaty would be to invoke the construction put upon it in the highest court of the realm. It was quite competent to the British Parliament to have made the Quebec limits coterminous with the ceded territory, and if they fell short of part of it this would not affect the *ratio decidendi* the purview and scope of the treaty generally. We will consider this question of territory in the next chapter.

If this be so, then the one construction suffices for treaty and statute, and reduces the question to this simply: How does the supremacy of the king of a Protestant country affect the free exercise of religion to his Roman Catholic subjects? The Act of Supremacy was but a re-enactment by Elizabeth of a statute passed in the twenty fifth year of Henry VIII., entitled: "*An Act for the submission of the clergie to the King's Majestie.*" The preamble of this act is painfully significant of the times: "Whereas, the King's humble and obedient servants, the clergie of this rea'm of England, etc.," and then it goes on to recite the desire of the King in matters ecclesiastical. The submission of the clergie is accounted for at this particular junction by a Protestant writer, Short, in his "*History of the Church of England.*" The clergie were then under a *præmunire* in regard to Wolsey.* "In order to buy this off, the Convocation consented to a considerable subsidy, and in the bill which granted it the king's supremacy was asserted. It was, however, with much difficulty that this clause was passed, and so little with the good-will of the lower house that, after the acknowledgment, a proviso was inserted *quantum per Christum licet.*" This act made the King Primate

* *Præmunire* was a writ issued out of the civil courts under authority of a statute of Richard II., by which severe penalties were enforced against those who relied on Papal appointments to benefices that were claimed by the King.

of the Church of England, and by it the sovereign is regarded as being over all persons and over all causes, ecclesiastical as well as civil, supreme in the Church.

The author referred to, very candidly admits the reason of the assumption of this supreme ecclesiastical power ; it was to procure a divorce for the King from Queen Catharine. "The existence of the Church of England," he adds, "as a distinct body and her final separation from Rome may be dated from the period of the divorce." To obtain this and yet remain a Catholic—a Defender of the Faith—it is by various authors contended, was the sole aim of the King, and it is certainly clear that whatever his motives may have been, the doctrine of the royal supremacy was not pushed to as great a degree as in the reign of Elizabeth. In the interval between the reigns of these two sovereigns the first statute of Philip and Mary repealed this act and established the Church in its former relations to Rome. Elizabeth, on her accession, passed an act reviving the supremacy of the Crown, and re-enacting nearly everything that her sister had repealed.

Two short sections of the first act in the year 1558 will give all that is necessary. Section XVI. is as follows:

"And to the intent that all usurped and foreign power and authority, spiritual and temporal, may, forever, be clearly extinguished, and never be used or obeyed within these realms or any other of Your Majesty's dominions or countries. May it please Your Highness that it may be further enacted by the authority aforesaid, That no foreign prince, person, prelate, state, or potentate, spiritual or temporal, shall use, enjoy, or exercise any manner of power, jurisdiction, superiority, authority, pre-eminence, or privilege, spiritual or ecclesiastical, within this realm or any other of Her Majesty's dominions or countries, but the same shall be abolished thereout forever, any statute, ordinance, custom, constitution, or any other matter or cause whatever, to the contrary notwithstanding."

Section XVII. : "And that it may also please Your Highness that it may be established and enacted by the authority aforesaid, That such jurisdiction, privileges, superiority, and pre-emiunce, spiritual and ecclesiastical, or by any spiritual or ecclesiastical power or authority, hath heretofore been, or may lawfully be, exercised or used for the visitation of the ecclesiastical state and persons, and for reformation, order, and correction of the same; and of all manner of errors, heresies, schisms, abuses, offences, contempts, and enormities shall, forever, by authority of this present Parliament, be united and annexed to the Imperial Crown of this realm."

Coke and Hale put constructions on this statute which, at all events, suited the royal pretensions. Coke says that, "By the ancient laws of this realm the kingdom of England is an absolute empire and monarchy, consisting of one head, which is the King, and of a body consisting of several members, which the law divideth into two parts. The clergy and the laity, both of them next and immediately under God, subject and obedient to the head, . . . such an authority as the Pope heretofore exercised, is now annexed to the Crown by the above-mentioned statute." And elsewhere it is laid down judicially that "all that power which the Pope ever exercised within this realm on spirituals is now vested in the King."

These opinions were certainly opposed to Magna Charta, the first chapter of which stipulates that the Church shall be free and have her whole rights and liberties inviolable. As to the statute being declaratory of the common law, that went for nothing, as the whole doctrine was novel, and without custom or precedent justifying it. The title of "Supreme Head of the Church and Clergy of England" appears for the first time in the Petition of Convocation to Henry VIII. to relieve them from the penalties to which they were exposed.

If it were necessary to pursue this subject, there would be little difficulty in estimating how the members of the Church

of England regarded the change from the Papal to the Royal supremacy. It was well enough to inveigh against the supremacy of the Pope, but when the royal supremacy was found to be more intolerable, then it was time for a noted public man and writer to say that "pretensions of this sort, from whatever side they have come, have never found any permanent favor with the English people." This is very briefly the history of the passing of the Act of Supremacy—an act by which, in England, the King is supreme ordinary and who might, without any Act of Parliament, make ordinances for the government of the clergy, and if there be a controversy between spiritual persons concerning jurisdiction, he is arbitrator, and it is a right of his Crown to declare their bounds.

The King in England, therefore, became head of the church, no matter what the church was, and no matter what religion the King professed. He was King and Pope; the church became a department of the state, quite subordinate to the Crown and to its judicial and executive officers. It exists with the Crown, and ceases when the Crown ceases. The Crown was the head of Episcopacy in England, and might have been head of Presbyterianism in Scotland that tolerates no Episcopacy. A Catholic Stuart was the head of this Protestant Church. With such precedents, what obstacle was there to the omnipotence of the Parliament of Great Britain to assume headship over the Church of Rome in Canada? Under such a multiplication of recognized churches the Crown was likely to become an ecclesiastical hydra. If there was no great reason why that should be propagated in Canada which was regarded as damnable and idolatrous at home, then it was but a step further to have the viceroy in India proclaimed the head of the native church, as Lord Dalhousie thought he could be in Canada. Had the

Act of Supremacy been held to be in full force in Canada, there is little doubt but that no Catholic could have assumed any office, or any clergyman become recognized before the law ; but the statute itself was virtually repealed, especially as to the oath, and a new and simple one introduced. The words of the Quebec Act are, " may have, hold, and enjoy the free exercise of the religion of the Church of Rome, subject to the King's supremacy declared in the act, etc."

Now, as to the meaning put upon the statute by Lord Coke and referred to above, it is to this effect, that to the King of England there is now annexed such an authority as the Pope heretofore exercised. Suppose such power were annexed, it could vest only by some supposed transfer of it from the Pope himself ; or that the King inherently was possessed of it. The latter was the only view possible. The statute affirming this inherent authority could not make it a fact or make it believed by Catholics, and the only course open to the Crown was by active coercive measures in the more modern form of persecution. The Crown then, in Canada, said in effect, we will assume control over the Church and be its head whether it wants another head or not. The Church in Scotland would have been satisfied with the Crown, and why should Rome be more particular? One head, more or less, ought not to be a matter that a Catholic need worry about, as good Churchmen in England were liberal in this regard. A Queen was the first head ; there may have been no head, or an interregnum or hiatus or something of that sort from the time of Henry VIII. to Elizabeth, because Mary repealed her father's spiritual enactments. By plain statute, however, Elizabeth was head. Then we have Edward VI., a child of six years. There was no head, unless it be Cromwell, in the pre-restoration period. The oddest thing of all is, that James II., a Catholic, was head of the Protestant Church.

If so, was there not a fitness—a compliment nicely turned—that a Protestant should be the head of the Catholic Church? The ludicrous side of the matter in Canada was that the same King should be head of the Anglican and Roman Churches. Colonists should not be particular when the people at home were so easily satisfied. The head was ready made and at hand, and there was nothing to be done but fit the body to it. It was an adaptation somewhat of the methods of Procrustes, the Inhospitable, who had a simple remedy of adjusting all travellers to his bed. If too long, he cut a piece off; if too short, he had them stretched out the desired length.

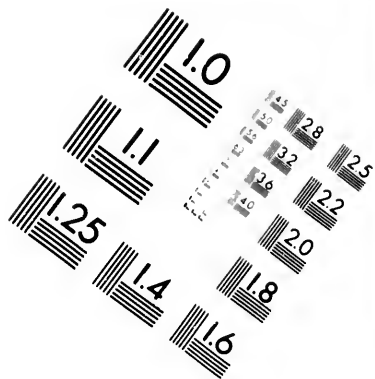
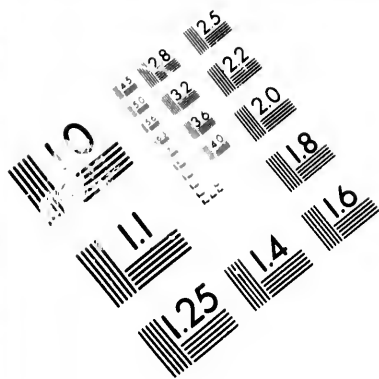
For a time it seemed as if the Catholic Church in Canada were to carry around this extra head on its shoulders and become a hydra among Churches, but the thing was too absurd. Some of the Governors who were sent out shortly after the Cession, held to the view that the King was really head of the Catholic Church, and they wanted the appointment of the parish priests, as a matter of patronage, just as one reads of appointments in the office of the Home Secretary in England. They wanted, in fact, to get the Church under the law, as every Church establishment is—"the creature and slave of the State." As a matter of policy and prudence, all the Catholic Bishops, down to a very recent date, were approved of in England before going to Rome. It is safe to say they called in at Downing street on their way to the head of their own Church. But, on the other hand, it is only fair to the civil authorities to say that *their* desire was generally, if not always, to get an unobjectionable and workable man for so important an office. The contest, in this respect, was fought out in Bishop Plessis's time, and the Crown gave up any pretensions to the double headship. The statute of Elizabeth was relegated to the region of obsolete law, but, as will be seen presently, not without a severe struggle.



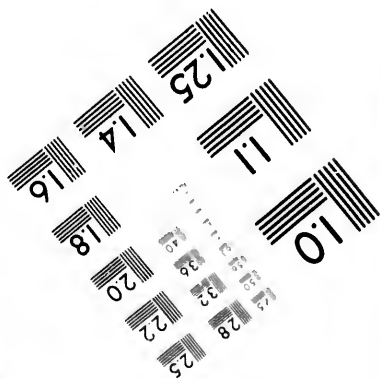
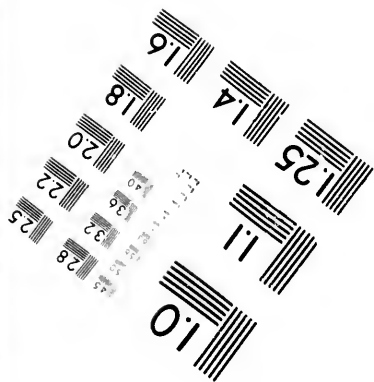
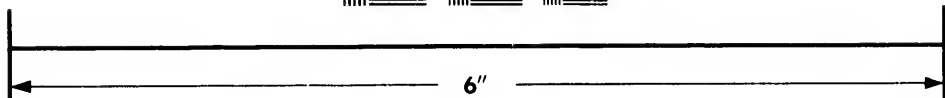
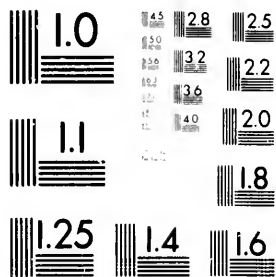
CHAPTER X.

Territory within the Treaty and the Quebec Act. The Quebec Diocese.

ATTENTION has been drawn to the extent of the Diocese of Quebec. That portion of it which now lies within the United States need not detain us. For twenty years after the Cession the English owned north and south of the Great Lakes, and Quebec claimed jurisdiction in the valley of the Mississippi, as far south as New Orleans. After the Treaty of Versailles, in 1783, only six years elapsed until the Catholics of the United States had a bishop of their own, and since that time the history of the Church in the United States would include that of the portion of Canada extending along the Mississippi. None of the territory south of Lakes Erie or Ontario, or west of Lake Huron, though included in the boundaries of Quebec under the Quebec Act of 1774, need be taken into consideration, though for many years after it passed into the hands of the United States authorities the ecclesiastical limits were not the same as the political boundaries. To day this territory includes the states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and that portion of Minnesota north of the Mississippi river and east of the meridian line passing through the source of that river—probably the 95th degree of longitude, counting west from Greenwich. By an Ordinance of Congress, dated July 13th, 1787, for the government of the territory of the United States northwest of the Ohio river, it was declared to be an article of compact between the original States and the people and States in said territory—a fundamental principle of law to remain forever unalterable—that



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"no person demeaning himself in a peaceable and orderly manner, should ever be molested on account of his mode of worship or religious sentiments."*

So far as the Church in Canada is concerned, the extent of the Diocese of Quebec at the time of the Treaty of Paris, or in 1774, may not be a safe guide in estimating how far the guarantees of the treaty extend. It will be borne in mind that, while the French ceded Canada to the British, they stipulated for the free exercise of religion, but only as regards their own subjects. There was no compact entered into that all other Catholics under British rule in America should be secured in the same rights. The "new" Roman Catholic subjects were the subjects to be protected. Now, it is true that Acadia and Newfoundland and some of the Gulf islands changed masters very frequently, and that, in general, they were under the ecclesiastical jurisdiction of the Bishop of Quebec; but they were, excepting perhaps the Island of St. John (now Prince Edward Island), and Cape Breton, under the Crown of England before the date of the Treaty of Paris. These inhabitants were, therefore, not new subjects, nor can it be urged with the same force that the guarantees of the free exercise of religion extend outside of the territory actually known as Canada or New France in 1763. The terms of capitulation at Montreal, indeed, refer to the "Diocese" and to the "priests and people" in the "towns" and "country places" and "distant posts" and to the "missionaries," but under the usual construction put upon like documents the terms of capitulation would be binding only and until the definitive treaty was executed. They were binding, certainly, for three years, but then came the treaty in which "His

* *Permoli v. The First Municipality of New Orleans*, 3 Howard, 689, and another case in the same State, reported in 8 Rob. La. 52.

Britannic Majesty on his side agrees to grant to the inhabitants of *Canada* the liberty of the Catholic religion. He will, in consequence, give the most exact and effectual orders that his new Roman Catholic subjects may profess the worship of their religion according to the rites of the Roman Church as far as the laws of Great Britain permit."

The writer, while stating his opinion that the treaty is now to be looked at rather than the terms of capitulation at Quebec and Montreal, is not unaware of the fact that almost every writer who has dealt with this matter has read treaty and capitulations as forming one international bargain. It is difficult to reconcile this with the history of the treaty, and with the general principles applicable to the construction of agreements culminating in one considered and definite document. Of course, the capitulations are good enough evidence of the desire of the parties, and where they do not offend against the meaning of the treaty, but help to explain it, they ought to be admitted. But it is manifest that entirely new stipulations may have been finally settled by the treaty which were never entertained by the generals who drew up the capitulations. Indeed, these capitulations anticipate other terms. It is a matter of fair argument to say that Catholics within that portion of the Diocese of Quebec which is yet British territory should be included within the guarantees of the Treaty. The construction of such a document should be liberal and where possible should be read in the light of the capitulations.

Nearly every treaty between France and England in the seventeenth and eighteenth centuries adjusting European matters affected colonists in America, the Anglo-Americans and the Canadians, as the French inhabitants were called. In 1697 the Treaty of Ryswick was signed, and by it the

French asserted the Kennebec to be the boundary between them and Massachusetts.* The entire eastern coast, Nova Scotia, Cape Breton, St. John (now Prince Edward Island), Newfoundland, Labrador, and Hudson's Bay remained to the French.

By the treaty of Utrecht, 1713, Nova Scotia, then called Acadia, according to its ancient limits, with the whole of Newfoundland, was given up to England. The French retained some reservation as to the fisheries in Newfoundland, and the English secured the fur trade of Hudson Bay.

By the Treaty of Aix la Chapelle, in 1749, Cape Breton, with the islands of St. Pierre and Miquelon, was restored to France. Three years prior to this, Cape Breton had been taken by the English colonists. By a consideration of these treaties it will be seen at once who were and were not already British subjects in what is yet British territory before the Seven Years' War ending with the Treaty of Paris. The inhabitants of Acadia, afterwards two provinces of Canada, were, in 1763, not inhabitants of Canada, and consequently were not "new" subjects, as Acadia passed over to England in 1713 by the Treaty of Utrecht. In a court of law it might not be arguable on the documents and facts to say that the guarantees of the stipulation were coterminous with the boundaries of the diocese, or that New Brunswick or Nova Scotia come within the scope of its benefits. On the other hand, the people of St. John and Cape Breton may fairly be

*Mr. Garnau says that soon after 1763 a slice of territory was detached from Canada and took the name of New Brunswick with an administration apart. Now Nova Scotia had a legislature of its own since 1758, and it then, and since 1731, included New Brunswick, but its western boundary was not easily defined. Acadia or New Brunswick, when it passed into the hands of the English in 1713, had for its western boundary the Kennebec River. Great Britain, since that time, lost the territory between the Kennebec and the present boundary, the St. Croix River

regarded as citizens of a part of New France, as "new" subjects of the Crown of Great Britain after the cession, though St. John was under British rule before the treaty and in 1758. However, it was part of the Seven Years' War; Quebec was in the same position, was under British rule since 1759, and Montreal since 1760.

There is no doubt at all but that the other provinces and territories in Canada, except probably British Columbia and some of the Hudson Bay territory, come within the treaty of 1763 or the act of 1774. A reference to the words of the treaty will explain this. The territory, ceded to England after the fall of Quebec and the capitulation, is referred to in the treaty, and in the act has already been referred to.

Under this treaty there is, therefore, included the province of Ontario and a part of the Northeast territory, along with the present Province of Quebec. These come within the operation of the Quebec Act as well.

What the western boundaries of New France may have been in 1763 is not now easy to determine. It was lately the subject of an appeal to the Privy Council between the Province of Ontario and the Dominion of Canada as to the western limits of this province. These were found to be more extensive than many supposed. But their extreme western limit does not reach into the province of Manitoba, and it would require a consideration of the Red River settlement and the wars of the traders to be able to offer any speculation as to whether treaty or act reached westward on the Saskatchewan. The country was explored by Verendrye, under French rule, in the early part of the eighteenth century, and large settlements made. The Hudson Bay charter goes back to the time of Charles II., but the French and English

were alternately masters of the fur trade, and the settlements were largely made up of the traders and the half-breeds.

As regards the Hudson Bay settlement, there were very few Catholics, the inhabitants being nearly all from the Orkneys of Scotland or from Switzerland. In the Red River settlement and at Sault Ste. Marie there were flourishing French posts with missionaries and a prosperous body of settlers, all Catholics.

The Quebec Act defined the boundaries of Canada and gave the benefit of a more or less liberal interpretation of the religious guarantees extended to all Catholics within the large area of the new province of Quebec. Beyond this area the act does not go, but the treaty does, and to a considerable extent of territory. Under the Quebec Act there was Labrador, from St. John River to Hudson Bay, Anticosti, and the Magdalen Islands; under the treaty, the isles of St. John (now Prince Edward Island) and Cape Breton. The Canadas and parts of the territories are both in the treaty and in the act.

It will thus be seen that for a portion of British America the Treaty of Paris applied; for another portion the Quebec Act applied, and for the remainder there seems to have been no guarantee as far as the Church is concerned. Indeed, in Nova Scotia one of the early Acts of the Legislative Council was to establish there by law the Church of England.

After discussing the question of the extent of the treaty as compared with the Quebec Act, or the benefits accorded by either, assuming that the former extends to the French territory now owned by Great Britain, by virtue of the law of nations, and that the latter (the act) is binding within whatever ter-

territory the Crown of England chose to extend it, it may be asked what difference would it make to claim under the treaty or under the Act? There can be no great difference; the act is fuller than the bare words in the treaty, and is not limited to the old French territory; it may be within larger or smaller bounds, and may, like any other imperial statute, extend its provisions anywhere within the Empire. It may, however, be repealed.

The treaty is limited to the old French territory, and cannot be extended beyond the ancient French possessions, nor does it include them all; on the other hand, it cannot be abridged as to that territory. There is no doubt also but that as long as the British Empire continues to exist and keep up its standing as a nation, it will be bound to keep faith with France as to the terms of the Treaty. The guarantees for these terms would extend to all Roman Catholics who, at any time subsequently, were British subjects in the ceded territory. A treaty does not become effete, though it is otherwise with an Act of Parliament; but until the Quebec Act is repealed a mere non-user would not render it lifeless. This act has been expressly recognized for over a hundred years in Canada, and in every great political change has been referred to as the basis of all our constitutions. It gives offence at the present day to those who are intolerant of religious freedom to Roman Catholics just as it gave in the years 1774 and 1791. In the famous Declaration of Independence of the United States of America, 1776, there is recited among other grievances of King George III., that he gave assent "for abolishing the free system of English laws in a neighboring province, establishing therein an arbitrary government, and enlarging its boundaries, so as to render it at once an example and fit instrument for introducing the same absolute rule into these

colonies." This neighboring province was, of course, Quebec, where, by this Quebec Act, the French laws were not so much introduced as that they were reinstated, being best suited to the Canadians. A government not much more arbitrary than the other English colonies possessed, was indeed introduced; but it gave free exercise of their religion to the Roman Catholics, the "new subjects" of the king. It is well known that this concession was not palatable to representatives among whom were those who wished for freedom of religion to all denominations "excepting to the professors of the Church of Rome,"—"to all Christians except Papists,"—and whose bitter and un-Christian "Address to the People of Great Britain" is one of their lasting disgraces.





CHAPTER XI.

The Church Under Early British Rule—1759-1791.

THE second volume of the *Mandements and the Pastoral and Circular Letters of the Bishops of Quebec*, issued within the past few weeks, is an elaborate work entrusted to the competent hands of Mgr. Têtu and L'abbe C. G. Gagnon, of Quebec, and will be of interest to all historical students.*

This volume covers a period of over sixty years, from 1741 to 1806, and embraces the last of the old French *régime* and the first half century of English rule. It closes with Bishop Denaut, and the next volume will be of even greater interest, as certain to contain much of the writings of Bishop Plessis not generally known to the English-speaking public. It was during the episcopate of this distinguished prelate that the vast Diocese of Quebec was divided; and so every part of the Dominion of Canada, as well English as French, is referred back to those times in tracing the origin of its own diocese. The period embraced in the volumes already published is of interest to the whole of North America. In considering in advance some circumstances in the early history of Canada under British rule, the reader will the better appreciate the position of Bishop Plessis and his predecessors; he will be able also to see more fully the whole situation when the next volume of the *Mandements* is put before him. The writer of these pages has necessarily drawn from other authorities, and will

* This was written in 1888. Another volume has appeared since that year.

look forward with great eagerness for their confirmation or correction by the work in question.

There are some circumstances in the history of the Church in Canada under British rule, of more than local interest. Towards the middle of the last century it will be remembered that, by the fortunes of war, Canada with all its dependencies fell under the sway of the English. The Canadian population at that time may be set down at seventy thousand inhabitants, all of whom, with the exception of the civil and military officers and a few others, not aggregating altogether five hundred persons, were Roman Catholics. Freedom of religion was guaranteed to the Catholics, but only such freedom as the laws of Great Britain permitted to Catholics. At that time there was no freedom for the exercise of the Catholic religion, there was no legal recognition of a Catholic in Great Britain. Apparently, therefore, the guarantees meant nothing; they seemed contradictory and nugatory, as much as to say the Catholics are to have freedom of worship so far as they can under a system of laws which prevent them from having any sort of freedom whatever. Yet within the first half century of British rule these difficulties were cleared up, and to-day the Catholics are in as good a position before the law as any other denomination. Indeed, they are thought by some to be the favored body under our constitution.

The object of this chapter will be to show how the legal inconsistencies and other difficulties of the first half century were met and disposed of; and the circumstances may be worth the passing notice of those learned in the great history of the Church. In a lesser way it may be of interest to those learned in the subtle science of the law, as another instance of the confounding and mystification of that misguided man, be he

historian or litigant, who does not first seek counsel from those learned in its mysteries.

The occupation of Canada from 1759, when Quebec was taken, down to 1763, when the treaty of Cession was signed, was purely military. So far as religion and other matters were concerned the terms of capitulation of Quebec and Montreal were the interim guides. Everything was uncertain; the ultimate destiny of the colony was in doubt; affairs were managed largely by the English commander as around a drum-head council. Fortunately for the Catholics, that commander was a reasonable, sensible man; and his conduct towards the Bishop of Quebec and the Catholics generally was, in view of his position and his prejudices, not to be fairly found fault with. Bishop Pontbriand, who had ruled the ancient See for nearly twenty years, was ill at Charlesbourg during the siege of 1759, and when, at the end of September, he returned to Quebec, it was to find the Cathedral, the palace, the churches of the religious communities, all in ruins. The venerable bishop survived the fall of his city less than one year. He died at Montreal on the 8th of June, 1760. His *Mandements* and circular letters in these latter days refer generally to the sad state of the colony, which was reduced to a pitiable condition. "You will say to the poor," were his last words, "that I leave them nothing in dying, because I die poorer than themselves." His last letter, addressed to the Canons, contained some instructions in regard to the approaching vacancy in the See, a matter which he foresaw would give rise at once to complications under the altered circumstances of the colony.

On the 2d of the following month, after his death, the Canons of Quebec met and named administrators for the

diocese : one charged with the part dependant on the English Government, one for Three Rivers and that part of the government under the French, one for Montreal and the upper part of the colony. Outside of Canada proper an administrator was sent to Acadia, one to Louisiana, and one to the Illinois country.* The first *Mandement* is that of "Etienne Montgolfier, Vicar-General of the Diocese of Quebec," formally addressed to the secular and regular clergy, etc., residing in the Government of Montreal. This is dated 6th of January, 1761. Three weeks later Joseph Francis Perreault, Canon of the Cathedral Church and Vicar-General, addressed his charge at Three Rivers. Both of these refer to the Lenten season, and are silent respecting public affairs. The short circular letter of M. Briand, dated in the interval and coming from the city of Quebec, gives a passing, but complimentary, notice of the Governor. The loyal attitude of the Church towards the civil powers appeared, however, in three several *Mandements*, dated in February, 1762, in which a "Te Deum" was directed to be chanted in all the parish churches on the occasion of the coronation and marriage of George III. In the following year an expression of respect and submission to the king was made to General Murray by Vicar General Briand. An ordinance appeared on the last day of the year regulating a prayer for the royal family. These are all the official ecclesiastical records between the year 1759 and the treaty of 1763.

The attitude of the civil or rather the military authorities towards the Church should be found in the capitulations of Quebec and Montreal. The inhabitants were preserved in their possessions and privileges ; the exercise of the Catholic

* M. Beaudoin to Louisiana, and M. Forget to the Illinois country.

religion was maintained ; the Bishop was recognized, and was permitted, freely and with decency, to exercise the functions of his state. This is the substance of the capitulations at Quebec. At Montreal the free exercise of religion was to subsist in its entirety. As will have been noted, the Bishop died on the 8th of June, 1760, so that when the capitulation of Montreal was signed on the 8th of September following, there was no Bishop. This accounts for the extraordinary-looking request of the Marquis de Vaudreuil, that the French King should continue to name the Bishop of the colony. The nomination of a Bishop was the first difficulty, but it did not arise until after the treaty had been signed, and was not adjusted for several years after that date.

The Treaty of Paris (10th of February, 1763) guarantees freedom of religion to the Catholics, "so far as the laws of Great Britain permit." The short fourth clause of the treaty containing this guarantee and this dangerous looking restriction of it must not have appeared to the Canadians so satisfactory as the diffuse wording of the capitulations. The *mandements* that follow the proclamation of the treaty of peace do not contain much on the subject. M. Perreault says : And even though the perfection of religion which you have the honor to profess, and whose free exercise is guaranteed by the treaty of peace, had not enjoined on you a scrupulous fidelity towards your new and lawful king, gratitude alone would oblige you to it."

M. Briand refers to the illustrious and charitable General Murray, to whom he had communicated the date and particulars of chanting the solemn Te Deum. M. Montgolfier wrote apparently with a bitterness that cost him the dislike of the English, and for which they revenged themselves later.

Speaking of the Cession and the king he writes : " You taste already during several years the sweetness of his reign. Even when he had conquered you by force of his arms, he appeared to prefer the condition that you were no longer enemies to the glory of having vanquished you. He could hurl on you his thunderbolts, but it is apparent only by the voice of his benefactions. Since you have become his conquest what graces, what favors have you not received at his hands ! Let us not undertake to go into details, they would be infinite ; the most sensible proof of it is your affection and your respectful attachment to the wise governor who represents so worthily so gracious a sovereign. . . ."

The Canons and Chapter of Quebec in the following month (13th September) petitioned the king that the vacant See be filled. After stating their position and the necessity of continuing the episcopate, they clearly put down what they required.

" We propose a chapter whose members shall be priests of the seminary, who will have the name and dignity of Canons without having their obligations because they would have none of their emoluments ; that is to say that the Canons destined by their state to the celebration of the divine office would only be charged with the service of the people of the city, the care of the seminaries and the instruction of young persons, particularly those intended for the ecclesiastical state.

"In this way with the same foundations and revenues, without multiplying the priests, the Church of Canada would preserve the same state; it would have its bishop, its chapter, and the directors of the seminary; the piety and desires of the clergy would be fully satisfied, and the people also who in point of fact have shown so much sensitiveness in this present

revolution on the question of religion, and who would apprehend its extinction hereafter if your Majesty refused a bishop. The illustrious and wise governor, M. Murray, viewing the good character of the Canadian people and their attachment to the faith of their fathers, has not failed to inform your Majesty that what we say is the exact truth."

Two days after this the Chapter met to consider the choice of a Bishop. M. Montgolfer was unanimously elected. He set out for England to have his nomination confirmed, but General Murray opposed it and the government would not recognize him. He resigned and named M. Briand, who, in the following September, was elected by the Chapter. The Governor gave M. Briand a letter of recommendation to the Colonial Secretary, and after all difficulties were overcome, on the 21st January, 1766, the Bulls were sent him from Rome.

The meeting of the Canons in September, 1763, when M. Montgolfer was elected, is worthy of mention on another account. It was arranged then, as appears, by a joint *mandement* of all the Vicars in authority, that the expenses of a deputation to London should be born—a deputation commissioned to demand the execution of the fourth Article of the Treaty, as to freedom of religion.

An application had been previously made to General Murray, demanding that the Bishop and his Chapter should be invested with the like rights possessed by Bishops and Chapters in all Catholic countries. "Murray," Garneau says, "commended this application to the favorable attention of the British ministry, and, in 1763, sent his secretary, M. Cramahé, to London to sustain the application."

Shortly afterwards, by reason of deputations, correspondence, reports and otherwise, the British Government were in

possession of all necessary facts in regard to Canada and its Catholic inhabitants, and the fourth section of the treaty came in for a large share of legal consideration.

By royal instructions, in force at this time, all Canadians were bound to take an oath of fealty, and the priests were officially notified that if they refused to take it they might prepare to leave the country. They were called upon to renounce the ecclesiastical jurisdiction of Rome, and were subjected to annoyances in their every day life. When, therefore, the English Government saw its way to the appointment of a Catholic Bishop, it was no doubt because the position of Catholics in Canada, under the treaty, had been fully considered. As we have already seen the crown officers in England made the amazing discovery that the dangerous words in the fourth section were not in legal intendment such as were popularly understood. When it was conceded that the Catholics were to have freedom of religion so far as the laws of Great Britain permitted, the crown officers gave it as their opinion that by the phrase *the laws of Great Britain* were meant such British laws only as were in force in British colonies. Consequently, none of the penal laws of the Old Country were in force in Canada. Elizabeth's statute as to supremacy was the only one applying to the outlying realms of the crown; and by what must now be deemed a ridiculously strained construction this statute was held to be in force.

Such was the state of the law and its interpretation when Bishop Briand, the first Bishop since the Cession, took charge of Quebec. It was as awkward a situation as could well be imagined, and each year added to the awkwardness of it.

The Governor, after a time, was surrounded by administrative and judicial officers, all of them Protestants and most

of them intolerant of Catholics. The Chief Justice and the Attorney-General considered it out of the question that there could be a Catholic Bishop at all, and the Chaplain of the garrison was intended to step into the vacancy at Quebec. The Attorney General, with much care, drafted a commission by which the Chief Superintendent of the Church of Rome could be safely recognized. It occurred to him that there might be two titular bishops for the one See, and this was a clever way of getting over the absurdity. From 1763 to 1774 affairs continued in a very unsatisfactory state. The Government endeavored to force the Catholics to take the oath of abjuration and other oaths required by the Elizabethan statute and its amendments; but the people and the clergy refused to accede to this. The result was that the matter rested there. In 1774, when the Quebec Act put it beyond doubt that the statute of Elizabeth was intended to apply, the British Parliament changed the objectionable oath in it to a milder one. The supremacy of the King in matters ecclesiastical, however, remained; and the one aim of all the governors, presented with greater or less degree of earnestness, was to bring the bishops and the curés under the control of the crown.

The very first Royal instructions provided that "no person should receive Holy Orders, nor have charge of souls, without a license duly obtained from the Governor. The Governor was strictly to safeguard the supremacy of the King to the exclusion of every power of the Church of Rome, exercised by any of its ministers in the Province, not absolutely requisite for the exercise of a tolerated worship." The Catholic clergy refused to submit to this, and some of them left the country and some others were deprived of preferment. The instructions were not interpreted very strictly, for, in the very year in which they were received Bishop Briand was paid a

pension by the Governor. His coadjutor, Monseigneur d' Esglis, had been previously chosen, and recognized by the State, *cum futura successione*, taking the oath of allegiance in full Executive Council. Each subsequent bishop had his coadjutor in the same way. While over-zealous officials were bringing the subject into prominence whenever it could be done, it so happened that there was always more urgent public business for the Governor to attend to. The war of the American Colonies occupied all parties from the Quebec Act until the peace of Paris in 1783; and the Province of Quebec took the intervening time between that date and its own division, in 1791, to consider more important internal matters.* The first Protestant bishop did not appear until 1793, after Upper and Lower Canada were called into existence.

The statute law stood in this way until 1791, the Governor and Council of Quebec having no power to make an ordinance touching religion unless such ordinance had received the King's approbation. As a matter of fact, no ordinance was passed during these 16 years touching religion, unless we except one of the year 1791.

On the 30th of April, 1791, an ordinance, one of the last, was passed in Quebec concerning the construction and repair of churches, presbyteries, and cemeteries. It was ordained by this that whenever it was necessary to form parishes, or to construct or repair churches, presbyteries, or cemeteries, the practice of the old French Canadian law was to be followed. The Bishop could exercise the ancient rights of bishops

* It was a favorite recommendation during this time that no priest, connected with the Bourbons, should be allowed into Canada. Priests from Savoy, Lord North wanted. See letters in the Haldimand collection, Canadian Archives.

under the French *regime*—the governor those of the Intendant. Protestants were exempt from contributing to the support of the Catholic Church, though this was always the law since 1774, that the accustomed dues and rights of the Roman Catholic clergy were to be paid only by Roman Catholics. The residue of these dues was, by the Quebec Act of that year, appointed for the support of the Protestant clergy, as has already been pointed out.





CHAPTER XII.

The Church Under Early British Rule—1791-1820.

THE Constitutional Act, 1791, continued all laws in force as they then existed, until repealed or varied under its authority. By the 35th section the provisions respecting Roman Catholic clergy were continued in each of the two provinces of Upper and Lower Canada, subject to be varied or repealed by the Parliament of Great Britain. The next seven sections are taken up with the reservation for the support and maintenance of a Protestant clergy. This reservation, known as the "Clergy Reserves," was one-seventh part of the lands granted by the Crown. This grant was to be applied solely for the purpose mentioned, and for no other; provision was made for the erection and endowment of parsonages, and the presentation of incumbents as in England under the jurisdiction of the Bishop of Nova Scotia.

The Act of 1791 left the Church of England with this provision for its support, and left the Church of Rome to continue in both provinces under the existing law, as set out in the Act of 1774.

When Lower Canada had settled down under its new constitution, it was evident from the writing of the time, that the question was likely to be pressed to a definite solution. A man, named Ryland, had been secretary for a number of governors, and, as he grew older, he increased in bitterness against everything Catholic. There lived contemporaneously

with him a young priest who was subsequently Vicar to Bishop Denaut, afterwards coadjutor, and ultimately bishop. This was Joseph Octave Plessis. He was the last bishop of the ancient See of Quebec as it existed in its original vast limits. He was worthy of the line of bishops, and worthy of his time; and much needed in the then crises of events, one of which was the freedom of his Church from State control. In the last years of his predecessor, and the first of the century, the estates of the Jesuits were secularized; the presence of Bishop Mountain was an excuse why no other bishop should be recognized; the good will of Ryland towards the oppression of the Catholics could always be counted on: and the general peace of the times made everything favorable towards effecting a settlement of a question that, for forty years, had given abundance of trouble whenever it was broached.

In 1801, the Governor, Sir Robert Shore Milnes, finding the popular influence too strong for the sort of government that then prevailed in the Colony, brought the causes of it under the notice of the Duke of Portland. One of these causes was "the independence of the whole body of the Roman Catholic clergy, who are accountable to no other authority than that of their own bishop." His Grace, in reply, directs his subordinate in this fashion:

"With respect to the Roman Catholic clergy being totally independent of the governor, I must first observe that I am not at all aware of the causes that have led to a disregard of that part of the King's Instructions, which require 'that no person whatever, is to have Holy Orders conferred upon him, or to have care of souls, without license first had or obtained from the Governor. The resumption and exercise of that

power by the Governor, and the producing such a license as a requisite for admission to Holy Orders, I hold not only to be of the first importance, but so indispensably necessary that I must call upon you to endeavor to effect it by every possible means which prudence can suggest. You will, therefore, readily conclude that I must see with pleasure your proposal of increasing the allowance to the Catholic Bishop, adopted almost to any extent, if it can prove the means of restoring to the king's representative in Canada, that power and control which are essentially necessary to his authority, and which is expressly laid down by the forty-fourth article of your Instructions, above alluded to."

The Governor, having at this time a quarrel on his hands with the Chief Justice Osgoode, was unable to devote much attention to the Catholics,* and, at that time also, the Rectors of the Protestant Church were in need of increased salaries, and official correspondence is mainly taken up with such matters. A letter bearing the initials H. W. R., and no doubt written by Secretary H. W. Ryland, appeared in 1804, respecting Church establishments :

"The Protestant Church," he says, "ought to have as much splendor, and as little power as possible.

*No reader of Mr. Parkman can fail to have observed with what avidity the learned historian seizes on the small scandals of the French *Régime*, dwelling with relish on the petty quarrels of the governor, the intendant and the bishop. Should he think well of turning his attention to the first fifty years of British rule in Canada, he will find scandals more in keeping with the dignity of his subject. It will be no longer a question between the bishop and the governor as to which one of them is entitled to the first obeisance of the schoolchildren; nor need the historian concern himself with deciding what petty functionary is to have precedence in the place of honor in the church. Much graver material is at hand. There was not one chief-justice, within the period referred to, that was not reported against, or impeached, or dismissed from office: Gregory, H y, Livius, Smith, Osgoode, Sewell, Monk. The governors reported against judges and attorney-generals, and *vice versa*, and, in a couple of instances, the governors were cited before the courts, and obliged to defend themselves. The first chief-justice, Garneau says, was taken out of a prison to be placed at the head of the courts, and one of his successors is, on the same authority, said to have been an illegitimate son of George III.

"I would, therefore, give to the Bishopric of Quebec a Dean, a Chapter, and all other ecclesiastical dignitaries necessary for show, and I would endow the See with sufficient lands to support this establishment in the most liberal manner ; but not one grain of civil power would I give to the Clergy, beyond the walls of their churches or church-yards."

It is not to be expected after this that Mr. Ryland would be very tolerant of what he calls the Popish Clergy. He says : "I have long laid it down as a principle (which in my judgment no governor of this Province ought to lose sight of for a moment) by every possible means which prudence can suggest gradually to undermine the authority and influence of the Roman Catholic priests. This great, this highest object that a governor here can have, might, I am confident, have been accomplished before now, and may, by judicious management, be accomplished before ten years more shall have passed over." He then sets out his plan for education, for Superintendents "by the King's (not the Pope's) letters-patent," and the licensing of those having the charge of souls ; "and these instructions once followed up, the king's supremacy would be established, the authority of the Pope would be abolished, and the country would become Protestant."

These views of the zealous official were propagated with great assiduity, and the more so, as at that very time Bishop Denaut was at the point of death, and the power and standing of his successor a matter likely then to be determined. Mr. Ryland failed, however. On the 26th of January, 1806, M. Plessis was to be admitted to the Council, and Ryland writes to his own bishop that, "to his infinite grief, vexation and disappointment, the President (Mr. Dunn) has determined to admit Mr. Plessis to take the oaths in Council to-

morrow." On the following day he wrote: "Mr. Dunn, having determined to admit Mr. Plessis to take and subscribe the oath as Bishop of Quebec, and by his special direction, this title has been entered on the minutes." On the 3d of the following month, Mr. Ryland was fairly beside himself with rage when, in like manner, "the Reverend Mr. Panet" took the oath as coadjutor of the Roman Catholic Bishop of Quebec.

The new bishop, however, found himself surrounded with many difficulties, not the least of which were certain requests or petitions presented to the king and the governor, by his predecessor, Mgr. Denaut, praying for civil existence to the clergy of Canada. These seemed necessary at the time, as the civil courts had refused them recognition. Ryland, the watchful secretary, had communicated this to Mr. Peel, the then Under-secretary of State for the Colonies. Ryland and the Protestant Bishop, Dr. Mountain, had gone to England to advance the Protestant and Episcopal cause, but with only a small measure of success. "I endeavored to give Mr. Peel a clear and correct conception of these matters," complains Mr. Ryland, "God knows with what success!" Writing to Sir James Craig, the new governor, the secretary says: "One particular, however, in the course of our conversation, struck me, and I think it necessarily deserving of notice. It is that, when I observed to Mr. Peel that you had with you all the English inhabitants, and, consequently, all the commercial interest of the country, he remarked that the Canadians were much more numerous; and he repeated the same remark more than once in a way that indicated a fear of doing anything that might clash with the prejudices of the more numerous part of the community, and this, if my apprehensions are

well founded, will be the great difficulty in the way of decided and effectual measures."

Mr. Ryland's apprehensions were well founded. Three days later he had another interview in which he "availed himself of the opportunity to say a few words concerning the character of Mr. Plessis"; and in the course of this interview he managed to give a bad character to most of the Canadian officials. Every week thereafter this indefatigable secretary pursued the unfortunate Mr. Peel, but without making substantial progress. "I was mortified" he says "to find that he has but an imperfect idea of the subject." He was subsequently told that the subject of his concern would be made a cabinet measure, and a meeting of the cabinet was called in which Lord Liverpool discussed every phase of colonial government, except that of the colonial church. In the course of a month, a formal state paper issued from Downing street, but it contained not the remotest reference to the Bishop or the Supremacy. Mr. Ryland, not disheartened by this, prepared a special memorandum in regard "to the proposed assumption of the patronage of the Romish Church," and called later on Mr. Peel about it. "He admitted me the moment I sent up my name," Ryland describes it, "but he appeared very different from what I have been accustomed to see him. * * * * He seemed quite *distrain*, and I did not stay with him above two minutes."

The reader need not be wearied with the pertinacity with which everything anti Catholic was pressed on the King's ministers. The law officers of the crown in July, 1801, had reported on the Sulpicians' estates in Montreal, and also on the question "Whether the right of presentation to vacant Roman Catholic livings in the province of Canada be in the

crown?" The answers were unfavorable to the Church and to the Seminarians. The lawyers in the course of a long report admit the possessory right of the Sulpicians and the impropriety of disturbing them; and as to the other question they say: "We think therefore that so much of the patronage of the Roman Catholic benefices as was exercised by the Bishop under the French Government is now vested in His Majesty"—His Majesty George III. No answer was given to the chief difficulty, which, however, was settled in Canada by the force of circumstances.

In 1775, as the Abbé Ferland says, "Sir Guy Carleton declared publicly that if the Province of Quebec had been preserved to Great Britain, it was owing to the Catholic clergy. He testified his gratitude by allowing the Bishop to exercise his functions peaceably, and to dispose of the cures at his will without having recourse to the Royal instructions, which seemed to him to have been prepared only for the destruction of the Catholic religion." The obligations to the clergy seem to have been forgotten as soon as the services of the clergy were no longer necessary; but when the war of 1812 began, the clergy became important once more. In the interval the governors had tried the methods of persuasion, of bribes and of threats, and in all they were unsuccessful. "They offer the Bishop an estate and revenues," says Mgr. Plessis in 1806; "*hæc omnia tibi dabo si cadens adoraveris me. . . .*"* In the preceding year, Attorney General Sewell had discussed the situation with the Bishop, in the course of which the former said:

"The government, acknowledging your religion, and avowing its officers to be officers of the crown, should provide

* "All these things I will give thee if falling down, thou wilt adore me."

for them as for all others. The Bishop should have enough to enable him to live in a splendor suitable to his rank; and a coadjutor also in proportion."

To which the Bishop replied: "I do not wish to see the Bishop in splendor, but I wish to see him above want. I do not wish to see him in the Legislative or Executive Councils, but as an ecclesiastic, solely entitled to the rank which is due to him in society." The threats came later and deserve a more extended notice. A year or so prior to the war of 1812, Bishop Plessis had issued a *Mandement* on the occasion of the imprisonment of Pope Pius VII., in which he invited the faithful to pray for the Holy Father. He styled himself Bishop of Quebec, as had been the custom at all times in Canada. This offended the Anglican Bishop, Dr. Mountain, and offended the civil authorities as well. "We have been praying for the deliverance of the Pope here," writes the Governor, Sir James Craig, to his secretary, Ryland, who was then in England; and the governor enclosed a copy of the offending pastoral—"as an instance of the complete independence which is assumed." The worthy Ryland submitted a case to the crown officers and asked if the Rev. Mr. Plessis did not render himself liable to a criminal prosecution thereon. The officers of the crown, however, paid no attention to the matter, and it was completely overlooked by the ministry.

A reference to one other circumstance immediately after this will be sufficient to show the perilous position of the Church at this time. The Governor and the Bishop in the course of a lengthy conversation on the whole case, laid open the aims and claims of the conflicting Church and State. This conversation has been preserved in two versions and is

of considerable importance. It was the last scene before the curtain fell.

The Bishop, writing to his Vicar general (Roux), says: "I had yesterday a conversation with His Excellency the Governor, which lasted one hour and three quarters, in which he exhausted himself, and me also, in speaking, without our being able to fall into accord upon the only point that was agitated, to wit: the nomination of curés. He viewed it obstinately as a civil affair, and as a prerogative of the Crown which it would never abandon, and which he maintained had been exercised from all time by the Kings of France and England, even before the Reformation of the Church in the latter kingdom. I tried to make him understand the essential difference between the patronage exercised over certain benefices, whether by the king or by private persons, and the canonical institution, which could only proceed from the Church, and without which all the commissions or nominations of sovereigns and other patrons, would be of no effect."

The Bishop in conclusion says: "That having done as much as my predecessors for the service of Government, I expressed a hope that the Governor did not desire to treat me worse than my predecessors; and further, that I would try more and more to deserve his protection, not so much for myself as for the faithful, in whose salvation I interested myself; that divine Providence would bring, without doubt, more favorable circumstances, etc. We disputed much, but the Governor was not angry, and we parted at last, little satisfied with each other."

The Governor's account of the interview is in this way: "I have lately had some conversation with Plessis, relative to his situation and that of his clergy. I had once or twice

loosely talked with him on the subject, but without entering very particularly into it, as I wished first to be more master of opinions at home upon it. I was therefore a little surprised when about a month ago he came to me and renewing the subject he expressed a wish that it was finished, and certainly at the moment implying upon the footing upon which it had stood with his predecessor, Denaut. I assured him that I thought there would be no difficulty. He then told me that he was to go to Three Rivers a day or two after, and requested to defer entering more particularly into it till his return. Whether he consulted Noiseux or Calonne, or both, I know not; but when he returned, I found him entirely changed, for his conscience would by no means permit him to consent to the Crown nominating to the livings. I immediately told him that it was unnecessary to continue any further conversation, as that was a matter which did not rest upon his assent or denial; the right actually existed in the Crown and would most assuredly sooner or later be resumed. Our conversation did, however, continue two hours and a half, but we parted without either inducing the other to change."

A short time after this conversation Craig was replaced by Sir George Prevost, who fortunately for the Bishop and the Church was of a different disposition from that of his predecessor. The Bishop prepared a memorial showing what was the position of bishops before the Cession, and since that time; and also the position it would be proper for them to occupy for the future. After tracing the history down to the year 1807, when his own coadjutor, Mgr. Panet was consecrated, he sums up the change in Craig's administration in this way:

"It is very well known that the bishops of Quebec do not pretend to exercise any other than spiritual authority over

the Catholic subjects of their diocese; and neither their jurisdiction nor their titles were ever contested till these latter years; when some insinuations artfully spread, and some assertions advanced in the courts of justice of this Province, began to throw over the exercise and even over the existence of the Catholic Episcopate of Canada, certain clouds, calculated to deprive these prelates of the influence which is necessary to them, whether for the conduct of their flock, whether for the success of services which the government of His Majesty might expect from them for the maintenance of good order, or for the security of the Province in moments of invasion. . . . For the future, the spiritual powers to be exercised by the Bishop of Quebec should come from the Church by way of the Sovereign Pontiff. He is not permitted to despoil himself of them either in whole or in part, nor to draw them from any other source. . . . He desires then that he and his successors be civilly recognized as Roman Catholic Bishops of Quebec; having under their episcopal jurisdiction all the Catholic subjects of his Majesty; . . . and that the said bishops may enjoy in an acknowledged manner the rights and prerogatives up to the present exercised without interruption by those who preceded them in the Government of the Church of Canada; and further, that the property of the Episcopal Palace be confirmed to the Roman Catholic Bishops of Quebec, and that they may transmit to the bishops, their successors, the acquisitions which they may have made in that quality."

This unmistakable language was preceded by a memorandum which is worth reproducing, as it puts the conduct of the Bishop in its true light. It will be remembered that the Bishops of Quebec had from the time of the Cession been in receipt of a small pension from the Government—a pittance

of two hundred pounds a year; Mr. Sewell had proposed that they live in splendor, as officers of the Crown should live; Sir George, that they should be put on a respectable footing, as he termed it.

"I am obliged to declare beforehand," writes the Bishop, when the shilling was again offered, "that no temporal offer can induce me to renounce any part of my spiritual jurisdiction. That jurisdiction is not mine. I merely hold it as a deposit for the Church, which I am in no wise permitted to dissipate, and of which I must render a good account."

Whilst the relations between the Church and the State continued in this way, the war of 1812 began. The Bishop, unmindful of past injuries, and acting only as his duty impelled him, threw himself with great energy into the defence of his country. He provided chaplains for the militia, counselled the curés, and issued a stirring address to the warriors who were exposing themselves for the defence of their country and their firesides. The Catholic subjects of the King gave good evidence of their loyalty to the Crown in this serious crisis, and gave it at a time when the loyalty of every man counted. Their services were praised and publicly recognized: as to the Bishop himself, long before the treaty of Ghent was signed, the Colonial Secretary wrote to Sir George Prevost as follows:

"I have to inform you," Lord Bathurst says, "that His Royal Highness, the Prince Regent, in the name of His Majesty, desires that hereafter the allowance of the Catholic Bishop of Quebec be one thousand pounds per annum, as a testimony rendered to the loyalty and good conduct of the gentleman who now occupies the place, as well as of the other members of the Catholic Clergy of the Province."

The Anglican Bishop and Mr. Ryland objected to the recognition of the Catholic Bishop in this way, but they were repulsed by the Secretary of State, who curtly informed Dr. Mountain that it was not an auspicious time to bring up such questions. In the course of a year or so, Mgr. Plessis was officially recognized as the Roman Catholic Bishop of Quebec. A *Mandamus* issued on the 30th of April, 1817, by which a seat in the Legislative Council of Lower Canada was accorded to him in virtue of his ecclesiastical position. Subsequently, by a circular despatch of Lord John Russell, it was directed that the word "Lord" should be put before the name of the Bishop. So ended the questions of Royal Supremacy, Ecclesiastical Superintendents, Rights of Benefices, and such kindred matters in the Church in Canada.*

No one can say that the Crown in Canada has not recognized the Pope of Rome as the head of the Catholic Church. England has done the same thing, and so for that matter has every power in the world. The Royal Supremacy, except for members of the Church of England, is no more in force against Catholics, or Methodists, or Baptists, or any of the so-called Dissenters, than are the penal statutes of the Tudors. What-

* The curious reader will find in the sixth volume of Christie's "Canada" the Draft of Letters Patent for the appointment of a Superintendent for the Church of Rome in Canada, an elaborate composition in four pages of fine type. A paragraph will suffice:

GEORGE III. BY THE GRACE OF GOD, ETC., ETC.

To all to whom these presents shall come. —GREETING.

WHEREAS, ETC., ETC.

Therefore, to this end, we, having great confidence in the learning, morals, probity, and prudence of our beloved A B, of, etc., having constituted, named and appointed, and by these presents do constitute, name and appoint him, the said A B, to be Our Superintendent Ecclesiastical for the affairs of the Church of Rome in Our Province of Lower Canada, to have, hold, exercise, and enjoy the said office of Superintendent Ecclesiastical for the affairs of Our Church of Rome in Our Province of Lower Canada for and during Our Royal Pleasure, with a salary of pounds Sterling per annum.

ever may have been the position of other churches, the Catholic Church fairly met the difficulty and overcame it. Amongst many other instances the Crown recognized the Supremacy of Rome in 1766 in the time of Bishop Briand of Quebec; and the Legislature of Upper Canada recognized it in 1826 in the Diocese of Kingston. The Parliament of the United Canadas in a statute passed in 1845, incorporated the Dioceses of Kingston and Toronto "in communion with the Church of Rome." Since Confederation in a half dozen statutes passed in Ontario and in the Dominion of Canada, the same supremacy has been recognized; and to-day it would be as idle to attempt the reviving of the obsolete legislation of Queen Elizabeth as it would be to attempt the reviving and importing of the Gallican articles of 1682.*

* Since these essays were written the Quebec Statute respecting the Jesuits Estate has been discussed throughout Canada and America, and the views and opinions given in the foregoing chapters and other arguments presented with great clearness and force, especially in the debates in the Dominion Parliament. The Premier of Canada, Sir John Macdonald expressed the opinion that these ancient statutes were long ago disused in England and could not be considered as in force in Canada. Sir John Thompson took the broad ground that if the Catholics in Canada were intended to enjoy the free exercise of their religion as guaranteed by the Treaty of 1763, they could not have existed under the rigors of the Act of Supremacy.





CHAPTER XIII.

Present Position of Canada—Political and Geographical.

WHEN we speak of Canada some explanations must be made. Nowadays, every one must keep up his knowledge of geography, as the political changes are so numerous that what was true of boundaries and divisions yesterday may not be so to-day. Until the Dominion of Canada was created in 1867, the provinces of Upper and Lower Canada comprised what, for one hundred years, was included in the old Canadas, or in the older Province of Quebec. To-day Canada means, leaving out Newfoundland, all British territory lying north of the United States. This includes everything on the map, except Alaska and Greenland, and is, indeed, as large as or larger than the States of the American Union. There are now seven provinces and several territories bound together by a central government in much the same way, politically, as are the American States. Two out of these seven provinces form the old Canadas, and these are the provinces of Ontario and Quebec, the latter returning to its old name in the Act of 1774. There are three provinces around the Gulf of St. Lawrence, and these retain their former names: Nova Scotia, New Brunswick, and Prince Edward Island. The first two of these were anciently known as Acadia, but they formed no part of Canada as ceded by France, belonging to the English for many years before Quebec. On the other hand, Prince Edward Island, called by the French St. John, and Cape Breton, were part of New France, and came to England under the Treaty of

1763. Newfoundland has never fraternized, politically or ecclesiastically, with British Canada, and is no part of the Dominion. The other two provinces of Canada are British Columbia, on the Pacific coast, formerly owned by the Hudson Bay Company, and Manitoba, a new creation of the Dominion Government, carved out of the great Northwest, lying between Ontario and the Saskatchewan Valley, which runs westward to the Rocky Mountains. This latter valley and the great Lone Land to the north of it and Manitoba, extending east to Hudson Bay, is the Northwest Territory, and was formerly the seat of the posts and forts of the Hudson Bay Company and other great fur companies. The remainder of the map eastward to the Atlantic forms the Northeast Territory.

These provinces and territories have, of course, their own separate histories. They have their own local laws and, in general, the care of their own domestic concerns. Formerly they were separate colonies of Great Britain, now there is only one colony—rather one dependency—as no one now, except some newly-arrived Englishman, would talk of Canadians being colonists.

The new Dominion of Canada dates back only a few years, beginning in 1867 with four provinces and adding others since that date until the present dimensions have been attained. It is plain, therefore, that considerable limitation must be made in speaking of historical matters in Canada, as there are fully half a dozen or more places to be considered, each with a separate history of its own. However, the two Canadas, once the old Province of Quebec, and forming the bulk of what was New France, are very prominently before the mind of the reader of political and ecclesiastical history. They were divorced by the Act of 1791, to be united again in 1840, and

seemed to be marked out as political partners, strange enough though the partnership be. The present constitution is the fifth or sixth change under British rule within its first century.

During all these mutations in constitutions the Church has a history that, though naturally branching out in more recent times with the increase of its children and by force of political changes, nevertheless preserved for a long time one headquarters in one ecclesiastical province, having to deal entirely with the Crown of England as represented by the governors of Canada. As has been said, all the other fragmentary possessions of Great Britain in America were separate colonies. But the Governor-General of Canada was, in an undefined way, their superior, was Captain General of all the forces, and took precedence of other British governors. Living in Quebec with the Bishop, he seemed to represent the Crown, as did the latter the Church, for all the British provinces. The battle of the Church was fought between these two under British rule as it was fought there under the French rule. It was not until the last years of the reign of George the Third that the Bishop of Quebec got his immense diocese subdivided, but the rights of his Church were contested and decided long before this, though by the same heroic bishop. In 1819 Bishop Plessis, having obtained sanction in England and in Rome, established vicar-generals in Upper Canada, in New Brunswick, and in the Northwest. From that time a particular history in these places is necessary. It is to this period, within which Bishop Plessis (he was Archbishop, but prudently declined to style himself such) and his predecessors, as bishops of Quebec, held the Church in their own hands, that attention has been mainly directed in the foregoing chapters. He and Bishop Laval stand at the end and beginning of the history of that Diocese.

Upper Canada, now Ontario, was the resort of United Empire loyalists, and many others, to whom the rule in Lower Canada or Quebec was displeasing, and it is now, as it always has been a part of Canada.*

In 1796 Newfoundland had been erected by the Holy Father into a Vicariate Apostolic, and the same condition of things began in Nova Scotia in the year 1817.

The other portions of Canada were under the supervision of the Bishop of Quebec. Louisiana had passed out of French control to Spain soon after the middle of the last century, and, in 1793, had its bishop, who was suffragan of San Domingo; so that nothing remained to England south or west of the Great Lakes, though the mission in Detroit was still practically under the care of Bishop McDonell, auxiliary of the Bishop of Quebec and later the first Bishop of Kingston.† As will be seen later, there was a certain analogy between the political and ecclesiastical divisions in Canada. What we call the Maritime Provinces, Nova Scotia, New Brunswick, and Prince Edward Island, now form one ecclesiastical province, and besides the popular name, the Constitution of Canada considers these as one division for purposes of representation in the Senate. Quebec and Ontario were also ecclesiastical provinces at the time of Confederation; and are separate political provinces, and the remainder of Canada went to make up the fourth ecclesiastical province. It has a Senate representation with reference to its population, so that four divisions obtain in each, though as to the Northwest the analogy is not so complete as in the other three. There are still vicariates apostolic in Canada. Newfoundland stands

* See appendix C as to the Church in Ontario.

† See *Reminiscences* of this Bishop by Chevalier McDonell, K.H.S.

aloof from the political combination of 1867, and is yet a colony of the empire. She also forms no part of any ecclesiastical province of Canada, being directly subject to the Holy See. The western portion of the island was made an Apostolic Prefecture in 1871, and is called St. George. The French islands in the Gulf of St. Lawrence form another Apostolic Prefecture.

There are in Canada about two millions of Catholics, over two thousand churches and about twenty-two hundred priests. Besides the system of Separate Schools for elementary education in three of its provinces, there are forty eight colleges, sixteen theological seminaries and about two hundred academies. The hierarchy is composed of one Cardinal (Archbishop), six Archbishops, sixteen bishops, five Vicars-Apostolic, and one Prefect-Apostolic.*

*The ancient See of Quebec is presided over by a Cardinal; Montreal, Toronto, Kingston, Halifax, Ottawa and St. Boniface by Archbishops. In the Province of Ontario there are Sees at London, Hamilton, Peterborough and Cornwall. In Quebec, at Chicoutimi, Nicolet, Rimouski, St. Hyacinth, Sherbrooke, and Three Rivers; in New Brunswick, Chatham and St John; in Nova Scotia, Antigonish; in Prince Edward Island, Charlottetown; in the Northwest, St. Albert; and in British Columbia, Vancouver Island.

There are Vicariates-Apostolic in Arthabasca-Mackenzie, and British Columbia, with two bishops in each, and the Vicariate of Pontiac with one bishop. The Prefecture Apostolic includes Anticosti and other British islands in the Gulf of St. Lawrence.—*Sadler's Catholic Almanac*, 1890.





APPENDIX A.

NOTE TO PAGE 41.

As to the nature of the Parliament of Paris, hear what Count de Maistre says of it: "Protestant dans le seizième siècle, frondeur et Janséniste dans le dix-septième, philosophe enfin et républicain dans les dernières années de sa vie, trop souvent le Parlement s'est montré en contradiction avec les véritables maximes fondamentales de l'État. Le germe Calviniste nourri dans ce grand corps devint bien plus dangereux lorsque son essence changea de nom et s'appela Jansénisme. Alors les consciences étaient mises à l'aise par une hérésie qui disait : je n'existe pas ; le venin atteignit même ces grands noms de la magistrature que les nations étrangères pouvaient envier à la France. Alors, toutes les erreurs, même les erreurs ennemies entre elles, étaient toujours d'accord contre la vérité, la nouvelle philosophie dans les parlements s'allia au Jansénisme contre Rome. Alors le Parlement devint en totalité un corps véritablement anti-Catholique, et tel que sans l'instinct royal de la maison de Bourbon et sans l'influence aristocratique du clergé (il n'en avait plus d'autre) la France eut été conduite infailliblement à un schisme absolu.

"Encouragés par la faiblesse d'une souveraineté agonisante, les magistrats ne gardèrent plus de mesure ; ils régentèrent les évêques, ils saisirent leur temporel ; ils appelèrent comme d'abus d'un institut religieux devenu français depuis deux siècles, et le déclarèrent, de leur chef, anti-français, anti-social, et même impie, sans s'arrêter un instant

devant un concile œcuménique qui l'avait déclaré, pieux devant le souverain Pontife qui répétait la même décision devant l'Église Gallicane, enfin debout devant eux, et conjurant l'autorité royale d'empêcher cette funeste violation de tous les principes.

“ Pour détruire un ordre célèbre ils s'appuyèrent d'un livre accusant qu'ils avaient fait fabriquer eux-mêmes et dont les auteurs eussent été condamnés aux galères sans difficulté dans tout pays où les juges n'auraient pas été complices. Ils firent brûler des mandements d'évêques, et même, si l'on ne m'a pas trompé, des bulles du Pape, par la main du bourreau. Changeant une lettre provinciale en dogme de l'Église et en loi de l'État, on les vit décider qu'il n'y avait point hérésie dans l'Église qui anathématisait cette hérésie ; ils finirent par violer les tabernacles et en arracher l'Eucharistie pour l'envoyer au milieu de quatre baïonnettes, chez le malade obstiné qui, ne pouvant la recevoir, avait la coupable audace de se la faire adjuger.”





APPENDIX B.

NOTE TO PAGE 69.

Portion of the debates in the British Parliament on the Quebec Bill 1774.

“THE SOLICITOR-GENERAL (afterwards Lord Chancellor Loughborough) said : ‘ I will state in a few words the intention of the proviso, with respect to the establishment of a provision for the clergy of Canada. First, I agree that the Roman Catholic religion ought to be the established religion of that country in its present state ; the clergymen of which are paid by the landed revenue of that country. I do not mean to assert that this should be perpetually the state of Canada, or that we are by law to enact that the people are not to be converted, or that the tithe shall remain in the Popish clergy, or that the tithe shall sink. I would not hold out the temptation that if you are a convert you shall not pay tithe. If the majority of a parish are Popish, there ought to be a Popish clergy in that parish ; that Popish clergy ought to be maintained by such as are Papists ; but the money of the Protestants ought to be applied for the encouragement of Protestants, and for the maintenance of Protestant clergy. In proportion as the scale, with regard to members, shall turn to the Protestant side, the clergymen ought to be Protestant. The amendment points rather more definitely to this object than the clause. There is no harm in leaving the discretion open. I would leave it so large that if they were to be converted to the Protestant religion, I should hold it to be abso-

lutely necessary to adopt the mode of Protestant worship ; and then all tithes should be paid by Popish inhabitants and others to the Protestant clergy. The bill waits events.'

"MR. CHARLES FOX.—" I perfectly agree that no Protestant ought to pay tithe to the Romish clergy. That is provided for in the clause. It could not be better stated for that purpose. But the learned gentleman has not absolutely said how far the proviso goes. The noble lord's amendment points to a more definite purpose. Am I to understand the tithe to be absolute so that you are not to alter it, and that it is contemplated to give to his Majesty the power of applying that tithe to the support of which clergy he pleases ?"

"THE SOLICITOR GENERAL.—" Though I wish to tolerate the Popish religion, I do not wish to encourage it. When we tell the Roman Catholics of Canada that we will not oppress them, we, at the same time, tell the followers of the Church of England that whenever their faith shall prevail, it will have a right to its establishment. As soon as the majority of a parish shall be Protestant inhabitants, then I think the ministers of the Crown are bound to make the minister of that parish a Protestant clergymen ; then, I think, it could not be felt by any man an act of injustice to say that the whole revenue of that parish shall be paid to the Protestant clergymen."

"LORD NORTH.—" Sir, as you have pointed to me, I presume to offer my sentiments, to explain the views I had when I made this amendment. I was in hopes of meeting the objections which had been made against the bill as it stood before. Those objections are two : one, that no care was taken of the Protestant clergy ; that no establishment had been thought of for them ; that, in the course of this bill, we had not only tolerated, but established the Roman Catholic religion, and that nothing had been thought of for the Protestant clergy. I am persuaded, in the present state of that country, the Protestant religion does not call much for support ; but the hope of greater encouragement should be held out to it. A small establishment, however, will be sufficient at present. The question then is asked, what is to become of the tithe which will be paid to the Protestant clergy at a future period ? Are the people in the meantime to pay no tithe ? And do you hold out to persons that they may, for the sake of saving the tithe, disclaim the Roman Catholic Church and not embrace any other ? I thought, by

the alteration of this clause, that both those questions would be answered, and I proposed it, by way of pointing out the method in which the tithe which would otherwise be paid by the Protestants to the Popish clergy, should be applied by the king to the Protestant clergy. The words I offered would, I thought, have answered that purpose. If gentlemen do not approve of them— I proposed them to remove particular objections,—but if they encounter greater objections I shall withdraw them. I will read my amendment :

“ The king will not be able to raise any tithe not now payable ; but may dispose of that which is payable. There will be an extent of power given to the king in that circumstance.’

“ MR. DUNNING.—‘ My opinion of religious toleration goes to all who stand in need of it, in all parts of the globe. It is a natural right of mankind that men should judge for themselves, and offer up to the Creator that worship which they conceive likely to be most acceptable to Him. It is neither competent, wise, nor just for society to restrain them further than is necessary. I should think the Roman Catholics would consider themselves well treated if they were put in the same situation the Protestant subjects are put in by this bill ; at least, the preference ought not to be given against them. I am anxious to know from the learned gentleman what the extent is understood to be of those laws which we are going, by this bill, to give to the Catholic Church. Will they include all ranks now in that province ? Will it include the bishop ? I should be glad to know how he came there ; what power he has there ; from whom he derives that power, whether by Papal authority or whether by royal authority ? In my apprehension, these questions deserve a serious answer. The dues and tithes, whatever they are, which may belong to this bishop and which he has thought fit to appropriate to himself by his own authority, will go to his successor to the end of time without any interposition of royal authority. Whether the bishop has exercised the power of nomination I do not know. Upon that fact I wish to be informed. Is it the intention of ministers that he shall, for the future, name to vacant churches, or that the king shall so name ? If they think that the king only should name thereto, they will take care not blindly to give the power to the bishop ; nor will they give him the power of suspension, if they are, as they ought to be, ministers of peace, anxious to promote good will and good fellowship among men. To establish, in the

judgment of the learned gentlemen, is not to encourage ; in my judgment it is to encourage ; and especially if this is to be the predominant religion. I do not like domineering in religion. I do not think the religion of the many ought to be the religion of the few. According to my apprehension those few have as good a right to judge for themselves as those many. Every man has a right to pursue his own opinion ; no man ought to be permitted to control that of another.'

"MR. STANLEY.—'There is no inconvenience in supposing two religions established in the same country. For example, the establishment of the Roman Catholic religion has by no means excluded the Protestant.'

"MR. THOMAS TOWNSEND, JR.—'I want to see some specific provision immediately made in Canada for the Protestant religion. I was concerned to hear that nine or ten years ago there was not a single place of worship for the Protestant, which I consider to have been a great disgrace to the English governor. I was surprised at an expression dropped by the noble lord, 'that the Protestant religion in Canada at present was hardly an object worthy of consideration.' During the whole of these discussions, pains have been taken by the Prime Minister of this country, and Chancellor of the University of Oxford, to rank the Protestants in Canada as low as possible in number, consequence and character.'

"LORD NORTH.—'The honorable gentleman is word-catching. I certainly did say that the Protestant inhabitants were so few that they were hardly worthy of attention ; but I explained it at the time. What I meant was that they were not sufficiently numerous at present to make it necessary for the legislature to provide establishments and a revenue for them. With regard to the bishop, it is my opinion—an opinion founded in law—that if a Roman Catholic bishop is professedly subject to the king's supremacy, under the act of Queen Elizabeth, none of those powers can be exercised from which dangers are to be apprehended.'

"MR. EDMUND BURKE.—'The noble lord says he makes the proposition contained in the amendment in order to make the clause palatable : but if not liked, he has no objection to withdraw that amendment. Are they then mere nugatory words, since they are

drawn with such extreme levity? Then I promise mine as a better candidate for the consideration of the committee. But before I proceed, allow me to state, in a few words, my opinion with regard to the principle of toleration. There is but one healing Catholic principle of toleration which ought to find favor in this House. It is wanted, not only in our colonies, but here. The thirsty earth of our own country is gasping and gaping, and crying out for that healing shower from heaven. The noble lord has told you of the right of those people by the treaty; but I consider the right of conquest so little, and the right of human nature so much, that the former has very little consideration with me. I look upon the people of Canada as coming, by the dispensation of God, under the British government. I would have us govern it in the same manner as the all-wise disposition of Providence would govern it. We know He suffers the sun to shine upon the righteous and unrighteous; and we ought to suffer all classes, without distinction, to enjoy the right of worshipping God according to the light he has been pleased to give them. The word "established" has been made use of; it is not only a crime, but something unnatural to establish a religion, the tenets of which you do not believe. Applying it to the ancient inhabitants of Canada, how does the question stand? It stands thus: You have got a people professing the Roman Catholic religion, and in possession of a maintenance, legally appropriated to its clergy. Will you deprive them of that? Now that is not a question of "establishment;" the establishment was not made by you; it existed before the treaty; it took nothing from the treaty; no legislature has a right to take it away; no governor has a right to suspend it. This principle is confirmed by the usage of every civilized nation of Europe. In all our conquered colonies, the established religion was confirmed them; by which I understand that religion should receive the protection of the state in those colonies; and I should not consider that it had received such protection, if their clergy were not protected. I do say that a Protestant clergyman going into that country does not receive the protection of the laws, if he is not allowed to worship God according to his own creed. Is this removing the sacred landmark? What I desire is that every one should contribute towards the religion which he professes; and if this is proper to be done, why not do it immediately?

“THE ATTORNEY-GENERAL.—‘The present question turns upon the merits of two propositions. The one moved by the noble lord

stands in a very small compass—"let those inhabitants who profess the Popish religion continue under the obligation of paying tithes for the maintenance of the Popish clergy." But as there are a certain number of persons in the province who do not profess the Popish religion, some regulation ought to be entered into with regard to their tithe. The noble lord proposes a clause referring it to the king, to appoint the payment of their tithe, in such course and order as his Majesty's wisdom shall suggest, for the support of the Protestant clergy. Another plan which has been proposed is that instead of the tithes of the Protestants being paid as circumstances may require, they shall be paid to the receiver-general. They are not even then to be disposed of, even by his Majesty, as the exigency requires, but to be paid to the Society for the Propagation of the Gospel in foreign parts: so that instead of the disposal of the tithe being committed to the king, we are called upon to declare by our vote, that it is a fitter thing to place greater confidence in the wisdom and discretion of a religious corporation. I should never have thought of referring this to the opinion of the House. I have no difficulty in saying that the first proposition is infinitely the better of the two.'"

This is substantially all there is preserved of the debates on the clause as to religion, though there was considerable discussion on the second reading of the bill, when its principle was discussed.





APPENDIX C.

NOTE TO PAGE 119.

The following is the substance of part of a lecture delivered by the writer in the year 1886, and may contain some information useful for the young student. It refers to the Church in Upper Canada, now Ontario, and can be read in connection with Chevalier MacDonell's *Reminiscences* of Bishop MacDonell, published since that year. Some additions have been made to the lecture in order to bring the information down to date.

The old Province of Upper Canada being part of the ancient Province of Quebec until the year 1791, was subject to the laws and ordinances made under the Quebec Act of 1774, until these were repealed by virtue of the Act of 1791. This latter Act made provision for the Church of England, just as the former had made provision for the Church of Rome. The Crown of England, in order to maintain its own Church, set apart one-seventh of all the public lands in Canada for that purpose. This appropriation gave rise to what is known as the Clergy Reserves, and for fifty years they furnished material for religious strife. Prior to 1833 this favored Church received over 22,000 acres of land, and there was every possible attempt made to establish it in this country by law, just as it was established in England. The Church of Scotland made an effort to secure some of the lands and succeeded in its legal claim to the extent of obtaining 1160 acres before the year referred to. The Catholic Church was less fortunate, but, however, secured 400 acres. The Anglican and Catholic bishops and clergy were

paid considerable sums of money during the first half century, and the Presbyterians and Methodists came in for a share also ; but the law very slowly recognized any other churches than the first two named. An Act was indeed passed in 1798, authorizing certain ministers of "the Church of Scotland, or Lutherans or Calvinists" to celebrate the ceremony of matrimony, but it was a very disagreeable piece of legislation, as was a subsequent Act regarding Methodists. Tithes for Protestant clergy were abolished about the year 1830.*

The legislature in Upper Canada did not interfere with the Catholics or their Church, and left both to continue under the Quebec Act. That was in force, at all events until the year 1867, if it be entirely repealed by the Imperial Act of that year. In 1832 a Bill originated in the Legislative Council of Upper Canada "For the relief of Roman Catholic congregations in this Province," but was rejected by the House of Assembly. Two years later an Act was passed for the management of certain lands in the Township of Sandwich belonging to the R. C. congregation, but it was reserved by the Governor. The first Act recognizing the Catholic Church, and that with a foreign supremacy, was the Act incorporating the Dioceses of Kingston and Toronto in 1845. The Catholic Bishop, after the year 1827, was paid a stated sum of money, and there were also various sums apportioned out by the Government to the different parishes. Tithes were introduced for the Catholic clergy as far back as the year 1663 ; but the tithes were not the tenth part of everything as the word properly signifies. Tithes in the Canadas were the one twenty-sixth bushel of grain, and did not apply to anything except grain, or produce of the field. That is the meaning the word has in Quebec now, and what it meant formerly in Upper Canada, when, as was said, tithes were collected in Sandwich and in Glengarry.

The early missions in that part of Canada, or New France, now within Ontario, refer to Penetanguishene, Sault Ste Marie, Sandwich, Kent's Mission and many others founded over two hundred years ago.

* In 1831 there was a Report to the Legislative Assembly of Upper Canada, in these words: "Your committee do not admit that the Church of England is the established Church of this Province, and are therefore of opinion that the Executive, if possessed of the right, might appoint a member of any sect of Christians to officiate as chaplain of this House, constituted as the House of Assembly now is, and must always continue to be, of persons of various religious denominations. The appointment of any chaplain will in all probability be unsatisfactory to a majority of the House."

These were conducted by Jesuits, or Recollects, from Old France. The names of Brebœuf, Lalemant and Jogues are familiar to most readers of American or Canadian history. In 1667, Fenelon, a relative of the great Archbishop of Cambray, and Trouvé, undertook the Kenté Mission in Lake Ontario, at the expense of the seminary of Paris; and Dollier, Galinee and others labored along Lake Erie and the neighboring country. The history of these missions can be found elsewhere, and the reader's attention will here be briefly directed to events within the present century.

Bishop Plessis, as has been stated heretofore, was Catholic Bishop at Quebec shortly after Upper Canada was called into existence in 1791. About the year 1804 he confided the spiritual care of the Province to the Reverend Alexander MacDonell, who had one assistant, and these two did all the missionary work between Glengarry and Sandwich. After the lapse of a dozen years or so a priest was stationed at Perth and another at Kingston, and the total number of priests increased to six: two at St. Raphael's, the Rev. Alex. MacDonell and John McDonell, the former subsequently Bishop, and the latter his Vicar-General; Fathers Delamothe of Perth, Perinault of Kingston, Marchand of Sandwich, and Crevier (named also a vicaire) of Sandwich. The only other clergymen at this date in this Province were the clergymen of the Church of England—about ten in all.

In 1819 the diocese of Quebec was erected into an archdiocese (though Bishop Plessis did not assume the title) with two suffragan or auxiliary bishops, one for Nova Scotia and one for New Brunswick. In the same year, some months previously, Upper Canada was created a Vicariate-Apostolic and Father MacDonell was consecrated its Vicar-Apostolic and Bishop of *Resina in partibus* on the last day of the year 1820. Some difficulty having arisen as to the recognition of his diocese, he went to England and arranged the matter satisfactorily. Kingston was named as the Episcopal See and in the year 1826 it was erected into a diocese. It is stated to be the first diocese established in a British colony since the so-called Reformation.

Bishop Macdonell did missionary work in Canada for thirty-six years, and died in the year 1840. He is a martial figure in the history of the Church in this country, and had many difficulties to encounter. He had been chaplain in Ireland during the troubles of '98; he lived

through those riots against Catholics in Scotland that followed the Gordon riots in England; he was missionary in Canada during the war of 1812 and Bishop of Kingston during the Rebellion of 1837. He was a man that might have gone to the Crusades and would have prayed and fought as seemed best to him at the time. He was named a Legislative Councillor shortly after the creation of his See, and was in receipt of a considerable pension from the government of the day.

In 1830 there were fifteen priests in Upper Canada, many of whom were not unknown to persons now living. The Bishop lived at Gleggarry and had two chaplains, Rev. John McDonell and Rev. James Campion, with the Rev. M. Dempsey as secretary. The Very Rev. W. P. McDonald and W. J. O'Grady are given as Vicars General. Father Lalor was the assistant priest of Vicar McDonald at Kingston.

Father Edward Gordon attended to the mission of York and Adjala; Father Cullen to Niagara, Guelph and Dundas; Father Fluett to Amherstburg; Father Crevier to Sandwich and Rochester; leaving to the east Father James Crowley, of Peterborough; Father Michael Brennan for Hallowell and Marmora; Father Angus McDonell for Bytown; Father O'Meara, Prescott and Brockville; and Father William Frazer for St. Andrews and Cornwall. Bishop Gaulin is set down as in charge of Cornwall for the year 1832.

Of others long since passed away there were, about the years 1830-5, Father O'Connor, of Guelph; Father Lynn, of Niagara; Father Michael Russel, of the Gore; Father Downey, of London; Father Cassidy, of Guelph; Father McDonough of Port Hope, and Fathers Bennett, Cameron, Butler, Keenan, Hay, Lostrie, Morin, Polin and Moore in other places. In this year the Bishop and clergy were paid eleven hundred pounds sterling, and for churches seven hundred and forty-one pounds. During 11 years prior to 1835 Bishop MacDonell received £3,552; Dr. Strachan for nine years, £12,827.2.10. In 1834 the number of missions increased to 34 and the total number of Catholics 15,785.* There were also churches in course of erection at Hamilton, Paris, Waterloo Township, and in the Newcastle and Home Districts in 1832 Dr. Rolph says, and he adds that "Bishop MacDonell has long since desired to erect a college for the education of youth for

*The Government papers and almanacs of the time do not appear to include the French missions.

the priesthood in a beautiful and commanding piece of ground, skirted by a fine grove of lofty and majestic pines overlooking the town and suburbs of Kingston, together with the St. Lawrence and Lake Ontario and their lovely islands."

A gift of £1,000 by Cardinal Weld for the purpose of building a college at Guelph is mentioned in early days ; and the same writer, Dr. Rolph, says that there was in Prescott a very elegant stone building, erected by the Catholics, denominated the Grenville College, over which the Rev. J. W. Champion presided.

After the death of Bishop MacDonell, in 1840, he was succeeded by his coadjutor, Bishop Gaulin, who died in 1857. In 1841 the large Diocese of Kingston was divided, leaving the western part of Upper Canada to form the See of Toronto ; forty-one years later the ancient See was again shorn of part of its western territory, out of which the Diocese of Peterborough was created ; and in this present year (1890) a portion of its eastern territory has been formed into the Diocese of Alexandria. In 1848 the Diocese of Ottawa (Bytown), was erected, and in 1856 the Dioceses of London and Hamilton formed out of the Diocese of Toronto. Toronto was elevated to a Metropolitan See in 1870, Ottawa in 1886, and Kingston in 1889. In 1859 the See of London was changed to Sandwich and remained there for ten years, after which time London became the Episcopal See as it was originally in 1856, and has so continued to the present time. In 1874 the Right Rev. J. F. Jamot was raised to the episcopal dignity and made Vicar-Apostolic of Northern Canada ; and in 1882 the Right Reverend Z. N. Lorrain was similarly elevated and made Vicar-Apostolic of Pontiac. The total Catholic population of Ontario in 1889 is about 350,000, with about 350 priests. The following gives the names and dates of the deaths of the deceased Bishops, and of the one deceased Archbishop of this Province :

TORONTO—Archbishop Lynch, 1888.

KINGSTON—Bishop MacDonell, 1840.

Bishop Gaulin, 1857.

Bishop Phelan, 1857.

Bishop Horan, 1875.

Bishop O'Brien, 1879.

Present Archbishop, the Most Reverend James Vincent Cleary, Bishop in 1880; Archbishop in 1889.

TORONTO—Bishop Power, 1847.

Bishop Charbonnell, (resigned in 1860).

Present Archbishop, the Most Reverend John Walsh, 1889.

Auxiliary Bishop, the Right Rev. Dr. O'Mahony.

OTTAWA—Bishop Guigues, 1874.

Present Archbishop, the Most Reverend Dr. Duhamel, Bishop 1884 ; Archbishop 1886.

HAMILTON—Bishop Farrell, 1856.

Bishop Crinnon, 1874.

Bishop Carberry, 1883.

Present Bishop, the Right Reverend T. J. Dowling, 1889 ; translated from Peterborough.

LONDON—Bishop Pinsonneault (resigned 1866), 1883.

This prelate was succeeded by the Right Reverend (now the Most Reverend) John Walsh, in 1867, as Bishop of Sandwich, and in 1869 the latter was translated to London. In 1889 Dr. Walsh was promoted to the Archiepiscopal See of Toronto. The See of London is at present vacant.

PETERBOROUGH—Bishop Jamot, 1886.

In 1887 the Right Rev. Dr. Dowling was consecrated Bishop of Peterborough and translated to Hamilton in 1889.

Present Bishop, the Right Reverend R. A. O'Connor, 1889.

ALEXANDRIA.—

VICARIATE OF ALGOMA—This Vicariate in the year 1882 was merged in the Diocese of Peterborough.

VICARIATE OF PONTIAC—Present Bishop, the Right Rev. Dr. Lorrain.

Members of the Papal Household :

Monseigneur Proulx, Toronto (deceased).

Monseigneur Farrelly, Belleville.

Monseigneur Bruyere, London, (deceased).

Ontario clergymen and laymen honored in Rome :

Rev. Dr. Kilroy, Stratford.

Rev. Dr. Tabaret (deceased), President Ottawa University.

Rev. Dr. O'Connor, President Sandwich College.

Chevalier Casgrain, Knight Holy Sepulchre, Jerusalem.

Chevalier MacDonell, Knight Holy Sepulchre, Jerusalem.

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